

A BILL

entitled

SUBMARINE CABLES PERMIT AND LICENSING ACT 2019

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WHEREAS it is expedient to develop a new submarine cables industry for Bermuda, by way of a submarine cables permit and licensing regime:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

SUBMARINE CABLES PERMIT AND LICENSING ACT 2019

PART 1 INTRODUCTION

Citation

1 This Act may be cited as the Submarine Cables Permit and Licensing Act 2019.

Interpretation

2 (1) In this Act, unless the contrary intention appears—

“the Act” means the Submarine Cables Permit and Licensing Act 2019;

“advisory panel” shall be construed in accordance with section 35 of the Regulatory Authority Act 2011;

“Authority” means the Regulatory Authority established under the Regulatory Act 2011;

“Bermuda ship” shall have the same meaning as in section 2(1) of the Merchant Shipping Act 2002;

“Bermuda waters” means—

- (a) Bermuda territorial waters; and
- (b) the waters of the EEZ;

“business day” shall have the same meaning as in section 1 of the Public Holidays Act 1947;

“carrier”^{**} to be determined once policy has been settled;

“EEZ” shall be construed in accordance with the proclamation (establishing an exclusive economic zone in Bermuda) made on 10th June 1996;

“engage in conduct” means to do an act or omit to do an act;

“Environment Minister” means the Minister responsible for environmental affairs;

“foreign national” means a person who is not a resident of Bermuda;

“foreign ship” means a ship that is not a Bermuda ship;

“installation” in relation to a submarine cable, includes—

- (a) the laying of the cable on or beneath the seabed;
- (b) the attachment of the cable to any other cable or thing; and
- (c) any activity that is ancillary or incidental to an activity covered by subsection (a) or (b));

“international agreement” means—

- (a) a convention to which Bermuda or the United Kingdom is a party; or

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- (b) an agreement or arrangement between Bermuda and a foreign country, and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country;

“line link” means a communication cable;

“Minister” means the Minister responsible for telecommunications;

“person” includes a body corporate;

“protective zone” means a protective zone authorized by the Authority under section 4 of the Submarine Cables (Protected Areas) Act 2019;

“protective zone installation permit” means a permit under Part 2 of this Act;

“regulated submarine cable” means a submarine cable regulated in accordance with Part 3 of this Act;

“ship” shall have the same meaning as in section 2(1) of the Merchant Shipping Act 2002;

“submarine cable” means that part of a line link—

- (a) that is laid on or beneath the seabed that lies beneath Bermuda waters;
 - (b) that is laid for purposes that include connecting a place in Bermuda with another place in Bermuda (whether or not the cable is laid via a place outside Bermuda); and
 - (c) that is connected to a place in Bermuda;
- and includes any device attached to that part of the line link, if the device is used in or in connection with the line link.

“Submarine Cable Licence” shall be construed in accordance with sections 32 and 33 of this Act.

(2) A reference in this Act to—

- (a) the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable;
- (b) a submarine cable includes a reference to a part of a submarine cable.

PART 2

PERMITS TO INSTALL SUBMARINE CABLES

Application for an installation permit to install a submarine cable

3 (1) A carrier may apply to the Authority for a permit (a protective zone installation permit) to install—

- (a) one or more submarine cables in a protective zone; or

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- (b) a single submarine cable in both—
 - (i) a protective zone; and
 - (ii) Bermuda waters that are not in a protective zone; or
- (c) install each of 2 or more submarine cables in both—
 - (i) a protective zone; and
 - (ii) Bermuda waters that are not in a protective zone.

(2) It shall be immaterial whether the cable or cables specified in the application are the cable or cables in relation to which the protective zone was determined.

Form of application etc

- 4 (1) An application shall be—
- (a) in writing; and
 - (b) in the form approved in writing by the Authority.
- (2) The approved form shall require the application to set out—
- (a) the proposed route or routes, in Bermudian waters, of the submarine cable or cables specified in the application;
 - (b) information about the ownership and control of the submarine cable or cables specified in the application; and
 - (c) any other relevant information.
- (3) For the purposes of subsection (2), control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices—
- (a) whether or not having legal or equitable force;
 - (b) whether or not based on legal or equitable rights; and
 - (c) whether or not capable of being exercised indirectly through one or more interposed companies, partnerships or trusts.

Application to be accompanied by a fee

- 5 (1) An application shall be accompanied by a fee (if any) payable in accordance with the schedule of fees.
- (2) **The exact fees are to be determined.

Withdrawal of application

6 For the avoidance of doubt, this Part does not prevent the withdrawal of an application and the submission of a fresh application.

Notification of change of circumstances

- 7 (1) Where—

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- (a) an application is pending; and
- (b) the applicant becomes aware of a change of circumstances relating to information set out in the application,

the applicant shall—

- (c) notify the change to the Authority; and
- (d) do so as soon as practicable.

(2) After considering the notification, the Authority shall decide whether or not the change should be treated as a material change in circumstances for the purposes of section 13.

(3) The Authority shall—

- (a) notify the applicant in writing of the Authority's decision under subsection (2); and
- (b) do so within 2 business days after the day on which the decision is made.

Further information

8 (1) The Authority may request the applicant to give the Authority further information about the application.

(2) The Authority may refuse to consider the application until the applicant gives the Authority the information.

Consultation

9 (1) Before making a decision on the application for a protective zone installation permit, the Authority shall consult—

- (a) the Ministry responsible for the environment;
- (b) the Minister of Public Works;
- (c) the Department of Marine and Ports;
- (d) the Ministry of Legal Affairs; and
- (e) any other persons the Authority considers relevant.

(2) Within 2 business days after the day on which the Authority receives the complete application, the Authority shall give each of the entities mentioned in subsection (1) a copy of the complete application.

(3) Within 15 business days after the day on which the entity receives a copy of the application, that entity shall—

- (a) give a written notice to the Authority stating that, while the notice remains in force, the Authority shall not grant the permit;
- (b) make a submission to the Authority; or

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- (c) give a written notice to the Authority stating that it does not require any further consultation about the application.
- (4) The Authority shall not grant the permit while a notice is in force under subsection (3)(a).
- (5) Unless sooner revoked, a notice under subsection (3)(a) remains in force during the period specified in the notice.
- (6) The period specified under subsection (5) shall not be longer than one month.
- (7) An entity who gives a notice under subsection (3)(a) may, by written notice given to the Authority, extend, or further extend, the period referred to in subsection (5), so long as the extension, or further extension, does not result in the notice under subsection (3)(a) being in force for longer than six months.
- (8) An entity who gives a notice under subsection (3)(a) may revoke the notice by giving the Authority a further written notice.
- (9) Within 2 business days after the day on which the Authority receives a notice under subsection (3)(a) or subsection (7), the Authority shall give the applicant a copy of the notice.
- (10) If a notice under subsection (3)(a) is in force, the entity who gave the notice may make a submission to the Authority.
- (11) A submission to the Authority under subsection (3)(b) or subsection (10) may include—
 - (a) recommendations about the conditions that should be specified in the permit under subsection 14(1)(d) or (e) of this Act; or
 - (b) such other matters (if any) as the Authority considers relevant.
- (12) A notice under subsection (3)(c) cannot be revoked.

Grant or refusal of permit

- 10 (1) After considering the application, the Authority may—
- (a) if this application is covered by section 3(1)(a) grant the applicant a protective zone installation permit authorising the installation, in the protective zone, of the submarine cable or cables specified in the application; or
 - (b) if this application is covered by section 3(1)(b) grant the applicant a protective zone installation permit authorising the installation, in both—
 - (i) the protective zone; and
 - (ii) Bermuda waters that are not in a protective zone, of the submarine cable specified in the application; or
 - (c) if this application is covered by section 3(1)(c) grant the applicant a protective zone installation permit authorising the installation, in both—

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- (i) the protective zone; and
- (ii) Bermuda waters that are not in a protective zone, of each of the submarine cables specified in the application.

(2) After considering the application, the Authority may refuse to grant a protective zone installation permit.

(3) If the Authority refuses to grant the permit, it shall notify the applicant in writing of the Authority's decision and the reasons for the decision.

(4) Where the Authority has refused to grant a permit in accordance with subsection (3) the applicant may appeal the refusal in accordance with section 43 of this Act.

Matters to which the Authority shall have regard in making a decision about a permit

11 In deciding whether to grant a protective zone installation permit, the Authority shall have regard to—

- (a) the objective of facilitating the supply of efficient, modern and cost-effective carriage services to the public;
- (b) whether the Attorney-General makes a submission to the Authority under section 9;
- (c) any relevant technical and economic aspects of the installation;
- (d) whether the installation involves co-location of the submarine cable or cables to which the application relates with one or more other submarine cables; and
- (e) any other matters that the Authority considers relevant.

Refusal of permit: public safety

12 (1) If the Minister of National Security, after consulting the Minister responsible for telecommunications and the Minister responsible for the environment, considers that the grant of a protective zone installation permit to a particular carrier would be prejudicial to public safety, the Minister of National Security may give a written direction to the Authority not to grant a protective zone installation permit to the carrier.

(2) The Authority shall comply with a direction under subsection (1).

(3) While a direction is in force under this section the Authority cannot reconsider a non-compulsory refusal to grant a protective zone installation permit to the carrier.

(4) Where an application for a protective zone installation permit is pending, at the time when the Minister of National Security gives a direction to an applicant under this section, then the application lapses.

(5) In this section—

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“non-compulsory refusal” means a refusal to grant a protective zone installation permit, other than a refusal that is required by this section.

Timing of decision on application

13 (1) Where—

- (a) a carrier applies for a protective zone installation permit; and
- (b) the Authority requests the applicant to give the Authority further information under section 8(1) in relation to the application,
the Authority shall take all reasonable steps to ensure that a decision is made on the application within—
 - (i) 60 business days; or
 - (ii) if the Authority, by written notice given to the applicant, specifies a greater number of business days (not exceeding 35 business days)-- that number of business days,

after the day on which the applicant gave the Authority the information.

(2) Where—

- (a) a carrier applies for a protective zone installation permit; and
- (b) the Authority does not request the applicant to give the Authority further information under subsection 8(1) in relation to the application,
the Authority shall take all reasonable steps to ensure that a decision is made on the application within—
 - (c) 60 business days; or
 - (d) if the Authority, by written notice given to the applicant, specifies a greater number of business days (not exceeding 35 business days) that number of business days,

after the day on which the application was made.

(3) Where—

- (a) a carrier applies for a protective zone installation permit;
- (b) the carrier notifies the Authority of a change in circumstances under subsection 7(1); and
- (c) the Authority decides under subsection 7(2) that the change should not be treated as a material change in circumstances for the purposes of this section,

the number of business days referred to in subsection (1) or (2) of this section is extended by 5 business days.

(4) Where—

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- (a) a carrier applies for a protective zone installation permit;
- (b) the carrier notifies the Authority of a change in circumstances under subsection 7(1); and
- (c) the Authority decides under subsection 7(2) that the change should be treated as a material change in circumstances for the purposes of this section,

the number of business days referred to in subsection (1) or (2) of this section is extended by—

- (d) 60 business days; or
 - (e) if the Authority, by written notice given to the applicant, specifies a greater number of business days (not exceeding 35 business days) that number of business days.
- (5) Where—

- (a) a carrier applies for a protective zone installation permit; and
- (b) the Attorney-General or the Ministry responsible for telecommunications gives a notice to the Authority under subsection 9(3)(a) of this section in relation to the application,

the number of business days referred to in subsection (1) or (2) of this section is extended by one business day for each business day in the period during which the notice remains in force.

Conditions of permit

14 (1) A protective zone installation permit held by a carrier is subject to the following conditions—

- (a) a condition that so much of the relevant cable or cables as is installed in a protective zone shall be installed within—
 - (i) 75 metres of the route or routes specified by the Authority in the permit; or
 - (ii) if the Authority specifies another distance in the permit that distance of the route or routes specified by the Authority in the permit;
- (b) a condition that so much of the relevant cable or cables as is installed—
 - (i) is not in a protective zone;
 - (ii) is not in Bermuda waters;shall be installed within—
 - (iii) if the Authority specifies another distance in the permit that distance of the route or routes specified by the Authority in the permit;

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- (c) a condition that the carrier, or a person acting on behalf of the carrier, shall not install the relevant cable or cables unless all regulatory approvals have been obtained for the installation;
 - (d) such conditions (if any) in relation to public safety as the Authority specifies in the permit;
 - (e) such conditions (if any) in relation to the installation of the relevant cable or cables as the Authority specifies in the permit.
- (2) The Authority may, by written notice given to the holder of a protective zone installation permit—
- (a) vary a condition covered by subsection (1)(a) or (b) by—
 - (i) specifying a distance; or
 - (ii) varying a distance; or
 - (b) vary a condition covered by subsection (1)(d) or (e).

Duration of permit

15 A protective zone installation permit is in force for a period of two years from the day the permit is granted and shall expire at the end of that two years.

Surrender of permit

16 The holder of a protective zone installation permit may, at any time, surrender the permit by written notice given to the Authority.

Extension of permit

17 (1) Before a protective zone installation permit expires, the holder of the permit may apply to the Authority to extend the duration of the permit for a further six months.

(2) The holder shall give the Authority reasons for requesting to extend the duration of the permit.

(3) If the Authority refuses the application, the Authority shall give the holder written notice of the Authority's decision and the reasons for the decision.

(4) Where a permit has been extended in accordance with this section, an additional permit fee will be required prior to the issuance of the extended permit.

Suspension or cancellation of permit

18 (1) The Authority may suspend or cancel a protective zone installation permit by written notice to the holder of the permit, if the Authority is satisfied that the holder has breached a condition to which the permit is subject.

(2) Before a permit is suspended or cancelled under subsection (1)—

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- (a) the Authority shall give the holder 30 days' written notice of the Authority's intention to suspend or cancel the permit and the ground or grounds on which the Authority intends to do so;
- (b) the Authority shall give the holder an opportunity to submit to the Authority any matters that the holder wishes the Authority to take into account in deciding whether to suspend or cancel the permit; and
- (c) the Authority shall take into account any matters submitted by the holder under subsection (b) and any action taken by the holder to address the Authority's concerns or to prevent the recurrence of similar circumstances.

Application of this Part

19 This Part applies to the installation of a submarine cable—

- (a) in a protective zone; or
- (b) in Bermudian waters,

by or on behalf of a carrier.

Liability for breaking or injuring a cable

20 If a person, in the course of laying or repairing a submarine cable of which he is the owner, causes a break in or injury to another cable, he shall be liable to bear the cost of repairing the break or injury.

Installation to do as little damage as practicable

21 The carrier shall ensure that all reasonable steps are taken to ensure that the installation causes as little detriment and inconvenience, and as little damage, as is practicable. [**Consequences for breach?]

Management of installation activities

22 The carrier shall ensure that all reasonable steps are taken—

- (a) to act in accordance with good engineering practice;
- (b) to protect the safety of persons and property; and
- (c) to protect the environment. [**Consequences for breach?]

Compliance with industry standards

23 The carrier shall ensure that the installation is done in accordance with any standard that—

- (a) relates to installation;
- (b) is recognised by the Authority as a standard for use in the telecommunications industry; and
- (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard. [**Consequences for breach?]

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Compliance with international agreements

24 The carrier shall ensure that the installation is done in a manner that is consistent with Bermuda's obligations under an international agreement that is relevant to the installation. [**Consequences for breach?]

Conditions specified in the regulations

25 The carrier shall ensure that the installation complies with any conditions that are specified in the regulations.

Attorney-General's consent required for certain enforcement proceedings

26 (1) An application for an injunction under section 66 of the Supreme Court Act 1905 shall not be made without the written consent of the Attorney-General if—

- (a) the injunction is in relation to a contravention by a carrier of the carrier licence condition set out in Part 3 of this Act;
- (b) the carrier is a foreign national;
- (c) the contravention occurred, is occurring, or is to occur, outside Bermuda; and
- (d) the contravention did not involve a Bermuda ship.

(2) A proceeding for the recovery of a pecuniary penalty under Supreme Court Act 1905 shall not be instituted without the written consent of the Attorney-General if—

- (a) the proceeding is in respect of a contravention by a carrier of the carrier licence condition set out in Part 3 of this Act;
- (b) the carrier is a foreign national;
- (c) the contravention occurred outside Bermuda; and
- (d) the contravention did not involve a Bermuda ship.

(3) In deciding whether to consent under subsection (1) or (2), the Attorney-General shall have regard to the obligations of Bermuda under international law, including obligations under any agreement between—

- (a) Bermuda; and
- (b) another country or countries.

Installing a submarine cable without a permit

27 (1) A person commits an offence where—

- (a) the person installs, or causes to be installed, a submarine cable;
- (b) the cable is installed in a protective zone; and
- (c) the person does not have a permit under this Part authorising the installation of the cable in the place in which it is installed.

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(2) Subsection (1) does not apply to a person who installs a submarine cable on behalf of a carrier, if the carrier has a permit authorising the installation of the cable.

(3) For the avoidance of doubt, the defendant bears an evidential burden in relation to the matters in subsection (2) and (3).

(4) A person found guilty of the offence in accordance with subsection (1) shall be liable—

- (a) on summary conviction to—
 - (i) a fine of up to \$50,000;
 - (ii) imprisonment for up to two years; or
 - (iii) or both; or
- (b) on conviction on indictment to—
 - (i) a fine of up to \$1,000,000;
 - (ii) a term of imprisonment of up to ten years;
 - (iii) or both.

Breaching conditions of a permit

28 (1) A carrier commits an offence if—

- (a) the carrier holds a permit under this Part authorising the installation of a submarine cable; and
- (b) the carrier, or a person acting on behalf of the carrier, engages in conduct which breaches a condition of the permit.

(2) A person found guilty of the offence in accordance with subsection (1) shall be liable—

- (a) on summary conviction to—
 - (i) a fine of up to \$50,000;
 - (ii) imprisonment for up to two years; or
 - (iii) or both; or
- (b) on conviction on indictment to—
 - (i) a fine of up to \$1,000,000;
 - (ii) a term of imprisonment of up to ten years;
 - (iii) or both.

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Failing to comply with Authority direction to remove or to disable an unlawfully installed submarine cable

29 (1) The Authority may direct a carrier to remove or to disable a submarine cable if—

- (a) the carrier installed the submarine cable, or caused it to be installed, in a protective zone without a permit under this Part authorising the installation; or
- (b) the carrier is installing the submarine cable, or causing it to be installed, in a protective zone without a permit under this Part authorising the installation.

(2) A carrier who does not comply with a direction under subsection (1) commits an offence.

(3) A person found guilty of the offence in accordance with subsection (1) shall be liable—

- (a) on summary offence to—
 - (i) a fine of up to \$50,000;
 - (ii) imprisonment for up to two years; or
 - (iii) or both; or
- (b) on indictment to—
 - (i) a fine of up to \$1,000,000;
 - (ii) a term of imprisonment of up to ten years;
 - (iii) or both.

Simultaneous grant of permit and licence

30 Subject to the provisions of this Act, the Authority may grant—

- (a) a permit to install a submarine cable under this Part; and
- (b) a licence to operate a submarine cable under Part 3,

simultaneously.

PART 3

LICENCE TO OPERATE SUBMARINE CABLES

Grant of licence

31 (1) The Authority may, after a submarine cable has been installed in accordance with Part 2 of Submarine Cables (Protected Areas) Act 2019 and where it considers it desirable so to do—

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- (a) upon receipt of an application in such form as may be specified by the Authority for a licence to operate a regulated submarine cable in a designated space; and
- (b) upon payment of the prescribed fee by the applicant,

grant to the applicant a licence to use the submarine cable as a regulated submarine cable, for a maximum period of twenty-five years.

- (2) The Authority shall specify in such a licence granted by him—
 - (a) the name of the licensee;
 - (b) the location of the regulated submarine cable and its measurements; and
 - (c) any conditions attached to the grant of the licence.

Licences

- 32 (1) For the purposes of this Act, there shall be four types of licence, namely—
- (a) a licence to operate a submarine cable for a maximum period of 25 years;
 - (b) a licence to lease and operate a submarine cable for a maximum period of 25 years;
 - (c) a renewal licence to operate a submarine cable for a maximum period specified within the licence; or
 - (d) a renewal licence to lease and operate a submarine cable for a maximum period specified within the licence.

(2) Where a person seeks to obtain a a license to lease and operate a submarine cable, in accordance with subsection (1)(b), the terms of the lease agreement shall form part of the licence.

Consultancy deposit

33 (1) Subject to subsection (3), the Authority may, if it considers it desirable so to do, require an applicant for a licence to operate a regulated submarine to provide a consultancy deposit in respect of the regulated submarine.

(2) The Authority shall specify by way of an Order the amount of the consultancy deposit which shall be provided by the applicant.

(3) The Authority may at any time require a licensee to increase the amount of the consultancy deposit given under this section to an amount sufficient to ensure the payment of the Authority's consultancy costs actually expended for the purposes of assessing an applicant's application for a licence under Part 3 of this Act.

(4) Any unused funds of the consultancy deposit shall be refunded to the applicant.

(5) The Authority shall have the right to request further funds from the applicant, where it deems it necessary to do so, to cover its actual costs.

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Notice of proposed grant of licence

34 Where the Authority proposes to grant a Submarine Cable Licence to an applicant, the Authority shall publish in the Gazette a notice specifying—

- (a) the name of the applicant;
- (b) the location of the proposed operation of the submarine cable by the licensee; and
- (c) that a person who objects to the proposed grant of such a licence may object in writing to the Authority within seven days of the publication of the notice.

Objection to proposed grant of licence

35 (1) A person may object in writing to the Authority, within seven days of publication of a notice under section 8, to the proposed grant of a Submarine Cable Licence specifying the grounds therefor.

(2) The Authority shall consider any objection in relation to a particular application for a licence when deciding whether to grant a licence to an applicant.

Considerations for grant of licence

36 The Authority shall not grant a Submarine Cable Licence to an applicant unless he is satisfied that—

- (a) the applicant is a fit and proper person to be entrusted with the operation of a submarine cable;
- (b) the applicant has sufficient financial resources to enable him to operate submarine cable in the designated protective the designated;
- (c) the applicant has sufficient financial resources to enable him to provide the facilities, equipment and personnel to operate a submarine cable efficiently;
- (d) the establishment of the submarine cable will not pose an obstruction to marine traffic in the affected area; and
- (e) there are no reasonable objections to the proposed grant of such a licence to the applicant.

Conditions of licence and variation of conditions

37 (1) The Authority may specify in a Submarine Cable Licence such conditions as he considers necessary.

(2) The Authority may, at any time for reasonable cause, add to, or vary, a condition attached to a Submarine Cable Licence, including—

- (a) the restriction of communication traffic to transit; or
- (b) the redundancy of local communication traffic.

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Duration of annual submarine cable licence and payment of fees

38 (1) A Submarine Cable Licence shall be granted for a period of one year. [**To be determined once policy has been settled].

(2) Every licensee to which a licence is granted under this Act shall, upon the issue of such licence, pay to the Authority a fee of \$1,000.00.

(3) On or before the 31st day of January of every year after the year in which a licence has been granted to a licensee, that licensee shall, during the subsistence of such licence, pay to the Authority a fee of \$1,000.00.

(4) Any licensee which fails to pay the fee provided by this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding one hundred dollars for each month during which such fee remains unpaid.

(5) The Authority shall publish annually in the Gazette the name of every licensee that has paid the fee provided by this section.

Renewal of Submarine Cable Licence

39 The Authority may renew an annual Submarine Cable Licence on the expiration of its term provided that no grounds exist for the Authority to revoke the licence.

Revocation of Submarine Cable Licence

40 The Authority may, in writing, at any time, revoke a Submarine Cable Licence if the licensee—

- (a) no longer operates the submarine cable;
- (b) applies to the Authority in writing requesting the revocation of the licence;
- (c) fails to comply with this Act or any enactment that prohibits, controls or regulates the operation of a submarine cable, or that relates to customs tariffs;
- (d) is bankrupt; or
- (e) has, in the course of his operation of the submarine cable acted dishonestly in his business dealings with customers, suppliers, customs officers or other servants of Her Majesty.

Notice of intention to vary or revoke a licence

41 (1) The Authority shall, before he varies any conditions in a licence or revokes a licence—

- (a) give the licensee notice in writing of the ground or grounds on which he intends so to do;
- (b) afford the licensee an opportunity to object in writing within the period of thirty days after receipt of the notice; and
- (c) take any such objection into consideration,

and, if the Authority decides to vary a condition in a licence or revoke the licence, it shall cause the instrument revoking the licence or varying a condition in the licence to be served on the licensee.

(2) The variation or revocation of a Submarine Cable Licence takes effect on the expiration of twenty-one days beginning on the date of service on the licensee of the instrument varying or revoking the licence.

Appeals

42 (1) Subject to subsection (2), an applicant or licensee, as the case may be, who is aggrieved by a decision of the Authority to—

- (a) refuse to grant a Submarine Cable Licence;
- (b) attach or vary any conditions attached to such a licence;
- (c) revoke such a licence,

may appeal to the Supreme Court within twenty-one days or such longer period as the Court may allow after receipt of notification of such decision, so specifying the grounds therefor.

(2) An applicant for a licence or a licensee, as the case may be, may make an appeal under subsection (1) on either or both of the following grounds—

- (a) that on the facts before him, the Authority's decision was unreasonable and cannot be supported;
- (b) the Authority erred on a question of law which was material to the decision,

but on no other ground.

(3) If an appeal is allowed by the Court, the Court shall remit the matter to the Authority with a direction, as the case may be—

- (a) to grant the licence which the Authority has refused to grant;
- (b) to remove any one or more conditions attached to the licence or grant the licence subject to such conditions as the Court may direct; or
- (c) not to revoke the licence,

and the Authority shall comply with any such direction.

(4) The bringing of an appeal under subsection (1) suspends the revocation or variation appealed against pending the determination of abandonment of the appeal.

(5) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

Notice if carrier decommissions a submarine cable

43 Where—

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- (a) a declaration of a protective zone in relation to a submarine cable has effect; and
- (b) the cable ceases to be in use (other than temporarily),

the carrier who is responsible for the cable shall notify the Authority in advance and in writing of the cessation, or as soon as reasonably practicable after the cessation happens.

PART 4

COMPENSATION AND REGULATION MAKING POWERS

Compensation

44 (1) If a person suffers financial loss or damage because of anything done by a carrier under this Act in relation to—

- (a) any property owned by the person; or
- (b) any property in which the person has an interest,

there is payable to the person by the carrier such reasonable amount of compensation—

- (c) as is agreed between them; or
- (d) failing agreement as is determined by the Supreme Court.

(2) Compensation payable under subsection (1) includes, without limitation, compensation in relation to—

- (a) damage of a temporary character as well as of a permanent character; and
- (b) the taking of sand, soil, water and other things.

Regulations

45 (1) The Minister may make regulations under this section—

- (a) subject to sections 31 and 32 of this Act, for the granting, extension or termination of a licence; or
- (b) prescribing anything that is necessary or convenient to be prescribed for carrying out this Act or giving effect to it, or that is required or permitted by this Act to be prescribed.

(2) Regulations may create offences and prescribe penalties for such offences but not in excess of—

- (a) in relation to a summary conviction—
 - (i) a fine not in excess of \$50,000; or
 - (ii) a term of imprisonment not in excess of two years; or
- (b) in relation to a conviction on indictment—

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- (i) a fine not in excess of \$100,000; or
- (ii) a term of imprisonment not in excess of four years.

PART 5 MISCELLANEOUS

Consequential amendments to the Marine Board Act 1962

46 The Marine Board Act 1962 is amended by inserting after section 5(a) the following—

- “(ba) the Minister shall exercise a general supervision and control over the navigation of ships and boats in the territorial waters of Bermuda, inclusive of any lawfully declared submarine cable protective zones, with the duty of co-ordinating the development, administration and operation thereof;”.

Consequential amendments to the Fisheries Act 1972

47 The Fisheries Act 1972 is amended—

- (a) by repealing and replacing section 2 with the following—

“Persons who are fisheries inspectors

2 Every officer of the Department of Environment and Natural Resources appointed for the purpose by the Minister by instrument in writing, every commissioned officer of Her Majesty’s Royal Navy, every customs officer and every police officer shall be a fisheries inspector for the purposes of—

- (a) this Act;
- (b) the Submarine Cables (Protected Areas) Act 2019 [^{**} to be amended to incorporate fisheries officers as enforcers of the Act, once the policy has been settled]; and
- (c) the Submarine Cables Permit and Licensing Act 2019 [^{**} to be amended to incorporate fisheries officers as enforcers of the Act, once the policy has been settled],

and shall have and may exercise the functions assigned to a fisheries inspector by or under the Acts named herein.”; and

- (b) in section 4(1) by inserting after the word “may” the words “subject to section 4 of the Submarine Cables (Protected Areas) Act 2019”.

Consequential amendments to the Public Lands Act 1984

48 The Public Lands Act 1984 is amended, in section 22—

- (a) by inserting after paragraph (1)(a) the following—

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- “(aa) dredge any part of the bed of the sea below high water mark which includes a protected zone in accordance with section 2 of the Submarine Cables (Protected Areas) Act 2019;”;
- (b) by deleting and substituting the full stop with a semi-colon and by inserting after paragraph (1)(b) the following—
 - “(ba) deposit any object or any materials on any part of the seashore or on the bed of the sea below high water mark which includes a protected zone in accordance with section 2 of the Submarine Cables (Protected Areas) Act 2019.”.

Consequential amendments to the Defence Act 1965

49 The Defence Act 1965 is amended, in section 5F(1)(a) by inserting after subsection (iii) the following—

- “(iiia) telecommunications (in relation to submarine cables);”.

Consequential amendments to the Regulatory Authority Act 2011

50 The Regulatory Authority Act 2011 is amended—

- (a) by inserting after section 12(c) the following—
 - “(ca) to promote and regulate, by way of the Submarine Cables Permit and Licensing Act 2019, a submarine cables industry in Bermuda;”;
- (b) by inserting after section 13(y) the following—
 - “(ya) take appropriate enforcement action, including the enforcement of criminal penalties by way of the Office of the Director of Public Prosecutions, in any case in which the sectoral participant has acted in contravention of the provisions of the Submarine Cables Permit and Licensing Act 2019 (which includes any Regulation or Act made thereunder); and”;
- (c) by revoking and replacing the Schedule with the following—

“SCHEDULE

(section 3)

REGULATED INDUSTRY SECTORS

Regulated industry sectors

The following sectors constitute regulated industry sectors—

- (a) electronic communications (other than broadcasting);

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(b) electricity; and

(c) telecommunications (in relation to submarine cables).”.

Transitional provision

51 (1) Section 27(1) (installing a submarine cable without a permit) shall not apply to a submarine cable that a person installed, or began to install, before the commencement of this section.

(2) The Authority shall not give a direction to a carrier under section 29(1) (failing to comply with Authority direction to remove or to disable an unlawfully installed submarine cable in relation to a submarine cable) that the carrier installed, or began to install, before the commencement of this section.

Commencement

52 This Act shall come into operation on a date appointed by the Minister by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to develop a new submarine cables industry for Bermuda, by way of a submarine cables permit and licensing regime

Clause 1 is the citation.

Clause 2 is the interpretation provision.

Clause 3 sets out the application requirements for an installation permit to install a submarine cable.

Clause 4 sets out the Form of application requirements.

Clause 5 sets out the application to be accompanied by a fee requirements.

Clause 6 sets out the withdrawal of application requirements.

Clause 7 sets out the notification of change of circumstances obligations.

Clause 8 is the further information provision, thereby allowing the Authority to seek further information from an applicant where it deems necessary.

Clause 9 imposes an obligation on the Authority to consult with: (a) the Ministry responsible for the environment; (b) the Minister of Public Works; (c) the Department of Marine and Ports; (d) the Ministry of Legal Affairs; and (e) any other persons the Authority considers relevant, before making a decision on the application for a protective zone installation permit.

Clause 10 sets out the grant or refusal of permit requirements.

Clause 11 sets out the matters to which the Authority shall have regard in making a decision about a permit.

Clause 12 grants the Minister of National Security the right of refusal of a permit in circumstances likely to affect public safety.

Clause 13 sets out the time considerations in relation to a decision on application.

Clause 14 sets out the conditions of permit.

Clause 15 sets out the duration requirements of a permit.

Clause 16 sets out the requirements for the surrender of a permit.

Clause 17 sets out the requirements for the extension of a permit.

Clause 18 sets out the grounds by which there can be a suspension or cancellation of permit.

Clause 19 affirms that this part of the Act applies to the installation of a submarine cable: (a) in a protective zone; or (b) in Bermudan waters, by or on behalf of a carrier; and

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(c) to the installation of a submarine cable in a protective zone by, or on behalf of, a carrier.
Liability for breaking or injuring a cable

Clause 20 imposes liability on a person where a person breaks or injures a cable.

Clause 21 sets out the obligation that where a person installs a submarine cable that they are to do as little damage as practicable.

Clause 22 sets out the obligations associated with the management of installation activities.

Clause 23 sets out the obligation for a carrier to comply with industry standards.

Clause 24 sets out the obligation for a carrier to comply with the international agreements that Bermuda is party to.

Clause 25 sets out the obligation for a carrier to comply with the conditions specified in the regulations made under this Act.

Clause 26 sets out the obligation to obtain the Attorney-General's prior consent for certain injunction enforcement proceedings.

Clause 27 sets out the offence of installing an international submarine cable without a permit.

Clause 28 sets out the offence of breaching conditions of a permit.

Clause 29 sets out the offence of failing to comply with an Authority direction to remove or to disable an unlawfully installed international submarine cable.

Clause 30 affirms that the Authority may simultaneously grant a submarine cable permit and a submarine cable licence.

Clause 31 sets out the requirements for the grant of licence.

Clause 32 sets out the types of licences to operate a submarine cable that may be granted by the Authority.

Clause 33 sets out the obligation and conditions for a consultancy deposit.

Clause 34 sets out the notice of proposed grant of licence obligation of the Authority.

Clause 35 sets out the means by which a person can object to proposed grant of licence to another person (which includes bodies corporate).

Clause 36 is the considerations for the grant of a licence.

Clause 37 sets out conditions of a licence and the means by which a person can seek to vary the conditions.

Clause 38 sets out the conditions associated with duration of an annual submarine cable licence and the payment of fees.

Clause 39 sets out the conditions by which a person can renew an annual Submarine Cable Licence.

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Clause 40 sets out the conditions by which the Authority can revoke a Submarine Cable Licence.

Clause 41 imposes an obligation on the Authority to give notice of its intention to vary or revoke a licence.

Clause 42 is the Appeals provision.

Clause 43 imposes an obligation on a carrier to give notice it decommissions a submarine cable.

Clause 44 sets out the means by which an affected person can obtain compensation for damage to property.

Clause 45 is the Regulation making provision.

Clause 46 is the consequential amendments provision for the Marine Board Act 1962.

Clause 47 is the consequential amendments provision for the Fisheries Act 1972.

Clause 48 is the consequential amendments provision for the Public Lands Act 1984.

Clause 49 is the consequential amendments provision for the Defence Act 1965.

Clause 50 is the consequential amendments provision for the Regulatory Act 2011.

Clause 51 is the transitional provision.

Clause 52 is the commencement provision.