



STATUTORY INSTRUMENTS.

S.I. No. 374 of 2007

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (UNIVERSAL SERVICE AND USERS'
RIGHTS) (AMENDMENT) REGULATIONS 2007

(Prn. A7/1203)

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (UNIVERSAL SERVICE AND USERS' RIGHTS) (AMENDMENT) REGULATIONS 2007

I, EAMON RYAN, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 46A of the Communications Regulation Act 2002 (No. 20 of 2002) (as inserted by section 14 of the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007)) and for the purpose of amending regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) giving effect to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002¹, hereby make the following Regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) (Amendment) Regulations 2007.

(2) These Regulations come into operation on 29th June 2007.

"Principal Regulations" defined.

2. In these Regulations, "Principal Regulations" means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003).

Amendment of Regulation 3 of the Principal Regulations (Provision of access at a fixed location).

3. Regulation 3 of the Principal Regulations is amended as follows:

(a) by substituting the following paragraph for paragraph (2):

"(2) A designated undertaking that provides a connection to the public telephone network shall ensure that the connection is capable of allowing the end user to make and receive—

(a) local, national and international telephone calls, and

(b) facsimile communications, and

(c) data communications at data rates that are sufficient to permit functional Internet access,

having regard to prevailing technologies used by the majority of subscribers and to technological feasibility."

¹OJ L 108, 24.4.2002, p. 51

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 6th July, 2007.

(b) by inserting the following paragraphs after paragraph (5):

“(6) A designated undertaking that fails to comply with paragraph (1), (2) or (3) commits an offence.

(7) An offence under paragraph (6) is one of strict liability and is triable summarily.

(8) An undertaking found guilty of an offence under paragraph (6) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 4 of the Principal Regulations (Directory inquiry services and directories).

4. Regulation 4 of the Principal Regulations is amended as follows:

(a) by substituting the following paragraph for paragraph (2):

“(2) The designated undertaking concerned shall ensure that the directory, or the directory inquiry service, referred to in paragraph (1) comprises all subscribers of publicly available telephone services in the State (including those with fixed, mobile, and personal numbers) who have not refused to have their personal particulars included in those directories. This paragraph is subject to Regulation 12 of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003.”;

(b) by inserting the following paragraphs after paragraph (5):

“(6) An undertaking that fails to comply with a requirement of paragraph (1), (2), (3) or (4) commits an offence.

(7) An offence under paragraph (6) is one of strict liability and is triable summarily.

(8) An undertaking found guilty of an offence under paragraph (6) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 5 of the Principal Regulations (Public pay telephones).

5. Regulation 5 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (6):

“(7) An undertaking that fails to comply with—

(a) paragraph (1), (5) or (6), or

(b) a term or condition specified under paragraph (2),

commits an offence.

(8) An offence under paragraph (7) is triable summarily.

(9) In proceedings for an offence under paragraph (7), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or relevant term or condition, or
- (b) it was not possible for that paragraph, or that term or condition, to be complied with.

(10) An undertaking found guilty of an offence under paragraph (7) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 6 of the Principal Regulations (Specified measures for disabled users).

6. Regulation 6 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (2):

“(3) A designated undertaking that fails to comply with—

- (a) an obligation specified under paragraph (1), or
- (b) a term or condition specified under paragraph (2),

commits an offence.

(4) An offence under paragraph (3) is triable summarily.

(5) In proceedings for an offence under paragraph (3), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant obligation, or the relevant term or condition, or
- (b) it was not possible for that obligation, or that term or condition, to be complied with.

(6) An undertaking found guilty of an offence under paragraph (3) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 8 of the Principal Regulations (Affordability of tariffs).

7. Regulation 8 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (4):

“(5) A designated undertaking that fails to comply with a requirement imposed under paragraph (2), (3) or (4) commits an offence.

(6) An offence under paragraph (5) is triable summarily.

(7) In proceedings for an offence under paragraph (5), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant requirement, or
- (b) it was not possible for that requirement to be complied with.

(8) An undertaking found guilty of an offence under paragraph (5) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 9 of the Principal Regulations (Control of expenditure).

8. Regulation 9 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (3):

“(4) A designated undertaking that fails to comply with paragraph (1) or (2) commits an offence.

(5) An offence under paragraph (4) is triable summarily.

(6) In proceedings for an offence under paragraph (4), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or
- (b) it was not possible for that paragraph to be complied with.

(7) An undertaking found guilty of an offence under paragraph (4) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 10 of the Principal Regulations (Quality of service of designated undertakings).

9. Regulation 10 of the Principal Regulations is amended as follows:

(a) by substituting the following paragraphs for paragraph (2):

“(2) If relevant parameters have been developed, the Regulator may specify additional quality of service standards in order to assess the performance of undertakings in providing services to disabled end-users and disabled consumers.

(2A) An undertaking designated by the Regulator in respect of the services referred to in Regulation 6 shall publish and make available to the Regulator information concerning its performance in relation to the parameters.”;

(b) by inserting the following paragraphs after paragraph (6):

“(7) A designated undertaking that fails to comply with—

- (a) paragraph (1) or (2), or
- (b) a quality of service standard specified under paragraph (2),
or

(c) a specification imposed under paragraph (3) or (5), or

(d) a direction issued under paragraph (6),

commits an offence.

(8) An offence under paragraph (7) is triable summarily.

(9) In proceedings for an offence under paragraph (7), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant paragraph, standard, specification or direction, or

(b) it was not possible for that paragraph, standard, specification or direction to be complied with.

(10) An undertaking found guilty of an offence under paragraph (7) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 12 of the Principal Regulations (Financing of universal service obligations).

10. Regulation 12 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (11):

“(12) An undertaking that fails to comply with the requirement imposed by paragraph (7) commits an offence.

(13) An offence under paragraph (12) is one of strict liability and is triable summarily.

(14) An undertaking found guilty of an offence under paragraph (12) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 14 of the Principal Regulations (Regulatory controls on retail markets).

11. Regulation 14 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (9):

“(10) An undertaking that fails to comply with—

(a) an obligation imposed on it under paragraph (1), or

(b) a requirement imposed under paragraph (3),

commits an offence.

(11) In proceedings for an offence under paragraph (10), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant obligation or requirement, or

(b) it was not possible for that obligation or requirement to be complied with.

(12) An undertaking that fails to comply with paragraph (5) or (8) commits an offence.

(13) An offence under paragraph (12) is one of strict liability and is triable summarily.

(14) An undertaking found guilty of an offence under paragraph (10) or (12) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 15 of the Principal Regulations (Regulatory controls on the minimum set of leased lines).

12. Regulation 15 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (2):

“(3) A designated undertaking that fails to comply with an obligation imposed under paragraph (1) commits an offence.

(4) An offence under paragraph (3) is triable summarily.

(5) In proceedings for an offence under paragraph (3), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant obligation, or

(b) it was not possible for that obligation to be complied with.

(6) An undertaking found guilty of an offence under paragraph (3) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 16 of the Principal Regulations (Carrier selection and carrier pre-selection).

13. Regulation 16 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (3):

“(4) An undertaking that fails to comply with—

(a) an obligation imposed under paragraph (1), or

(b) paragraph (3),

commits an offence.

(5) An offence under paragraph (4) is triable summarily.

(6) In proceedings for an offence under paragraph (4), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant obligation or paragraph, or

(b) it was not possible for that obligation or paragraph to be complied with.

(7) An undertaking found guilty of an offence under paragraph (4) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 17 of the Principal Regulations (Contracts).

14. Regulation 17 of the Principal Regulations is amended as follows:

(a) in paragraph (1), by inserting “that complies with paragraph (2)” after “a contract”;

(b) by substituting the following paragraph for paragraph (3):

“(3) If a contract (other than one providing connection or access or both to the public telephone network) is agreed between an end-user and a provider of electronic communications services, the provider shall ensure that the contract includes the information specified in paragraph (2).”

(c) by inserting the following paragraphs after paragraph (5):

“(6) An undertaking that fails to comply with paragraph (1) or (4) commits an offence.

(7) A provider of electronic communications services that fails to comply with paragraph (3) commits an offence.

(8) An offence under paragraph (6) or (7) is triable summarily.

(9) In proceedings for an offence under paragraph (6) or (7), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant paragraph, or

(b) it was not possible for that paragraph to be complied with.

(10) An undertaking found guilty of an offence under paragraph (6), or a provider of electronic communications services found guilty of an offence under paragraph (7), is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 18 of the Principal Regulations (Transparency and publication of information and quality of service).

15. Regulation 18 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (8):

“(9) An undertaking that fails to comply with paragraph (6) commits an offence.

(10) An offence under paragraph (9) is triable summarily.

(11) In proceedings for an offence under paragraph (9), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or
- (b) it was not possible for that paragraph to be complied with.

(12) An undertaking found guilty of an offence under paragraph (9) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 20 of the Principal Regulations (Interoperability of consumer digital television equipment).

16. Regulation 20 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (8):

“(9) A person who fails to comply with paragraph (1), (3) or (5) commits an offence.

(10) An offence under paragraph (9) is triable summarily.

(11) In proceedings for an offence under paragraph (9), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or
- (b) it was not possible for that paragraph to be complied with.

(12) An undertaking found guilty of an offence under paragraph (9) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 21 of the Principal Regulations (Operator assistance and directory inquiry services).

17. Regulation 21 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (5):

“(6) An undertaking that fails to comply with paragraph (1), (2) or (3) commits an offence.

(7) An offence under paragraph (6) is triable summarily.

(8) In proceedings for an offence under paragraph (6), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or
- (b) it was not possible for that paragraph to be complied with.

(9) An undertaking found guilty of an offence under paragraph (6) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 22 of the Principal Regulations (Single European emergency call number).

18. Regulation 22 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (3):

“(4) An undertaking that fails to comply with—

- (a) paragraph (1) or (2),
- (b) an obligation specified under paragraph (3),

commits an offence.

(5) An offence under paragraph (4) is triable summarily.

(6) In proceedings for an offence under paragraph (4), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph or obligation, or
- (b) it was not possible for that paragraph or obligation to be complied with.

(7) An undertaking found guilty of an offence under paragraph (4) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 23 of the Principal Regulations (European telephone access codes).

19. Regulation 23 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (4):

“(5) An undertaking that fails to comply with—

- (a) a requirement specified under paragraph (2) or (4), or
- (b) paragraph (3),

commits an offence.

(6) An offence under paragraph (5) is triable summarily.

(7) In proceedings for an offence under paragraph (5), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant requirement or paragraph, or
- (b) it was not possible for that requirement or paragraph to be complied with.

(8) An undertaking found guilty of an offence under paragraph (5) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 25 of the Principal Regulations (Provision of additional facilities).

20. Regulation 25 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (6):

“(7) An undertaking that fails to comply with—

- (a) paragraph (1), or
- (b) a direction issued to it under paragraph (4),

commits an offence.

(8) An offence under paragraph (7) is triable summarily.

(9) In proceedings for an offence under paragraph (7), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph or direction, or
- (b) it was not possible for that paragraph or direction to be complied with.

(10) An undertaking found guilty of an offence under paragraph (7) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 26 of the Principal Regulations (Number portability).

21. Regulation 26 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (3):

“(4) An undertaking that fails to comply with—

- (a) the request of a subscriber referred to in paragraph (1), or
- (b) an obligation specified by the Regulator under paragraph (2),

commits an offence.

(5) An offence under paragraph (4) is triable either summarily or on indictment.

(6) In proceedings for an offence under paragraph (4), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant request or obligation, or
- (b) it was not possible for that request or obligation to be complied with.

(7) An undertaking found guilty of an offence under paragraph (4) is liable on conviction—

- (a) if the offence is tried summarily, to a fine not exceeding €5,000, or
- (b) if the undertaking is a body corporate and the offence is tried on indictment, to a fine not exceeding—
 - (i) €5,000,000;
 - or
 - (ii) if 10 per cent of the turnover of the undertaking is greater than that amount, an amount equal to that percentage, or
- (c) if the undertaking is a natural person and the offence is tried on indictment, to a fine not exceeding €500,000.”.

Amendment of Regulation 28 of the Principal Regulations (Dispute resolution).

22. Regulation 28 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (8):

“(9) An undertaking that fails to comply with—

- (a) paragraph (1), or
- (b) a requirement specified under paragraph (2), or
- (c) a direction issued under paragraph (3) or (4),

commits an offence.

(10) An offence under paragraph (9) is triable summarily.

(11) In proceedings for an offence under paragraph (9), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, requirement or direction, or
- (b) it was not possible for that paragraph, requirement or direction to be complied with.

(12) An undertaking found guilty of an offence under paragraph (9) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 31 of the Principal Regulations (Directions).

23. Regulation 31 of the Principal Regulations is amended as follows:

- (a) by inserting “(1)” before “The Regulator may”;
- (b) by inserting the following paragraphs at the end:

“(2) A person who fails to comply with a direction issued to the person under paragraph (1) commits an offence.

(3) An offence under paragraph (2) is triable summarily.

(4) In proceedings for an offence under paragraph (2), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant direction, or

(b) it was not possible for that direction to be complied with.

(5) An undertaking found guilty of an offence under paragraph (2) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 32 of the Principal Regulations.

24. Regulation 32 of the Principal Regulations is amended by inserting the following paragraph after paragraph (13):

“(14) If the Regulator has brought proceedings for an offence under these Regulations, or given a notice under section 44 of the Act of 2002, in respect of a failure by a person to comply with an obligation or requirement imposed by or under, or a direction issued under, these Regulations, the Regulator may not make an application under this Regulation for an order to compel the person to comply with the obligation, requirement or direction.”.

Substitution of Regulation 35 of the Principal Regulations.

25. The Principal Regulations are amended by substituting the following Regulations for Regulation 35:

“Offence not to comply with requirement of Director of Consumer Affairs.

35. (1) A person who fails to comply with a requirement of the Director of Consumer Affairs under Regulation 33(1) commits an offence.

(2) An offence under paragraph (1) is triable summarily.

(3) In proceedings for an offence under paragraph (1), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant requirement, or

(b) it was not possible for that requirement to be complied with.

(4) A person found guilty of an offence under paragraph (1) is liable on conviction to a fine not exceeding €5,000.

Prosecution of offences under these Regulations.

36. (1) Proceedings for an offence under—

(a) Regulation 35, or

(b) section 39(6) of the Act of 2002 relating to an authorised officer appointed under Regulation 33(3),

may be brought and prosecuted by the Director of Consumer Affairs or by any other person authorised by law to prosecute offences.

(2) Except as provided by paragraph (1), proceedings for an offence under these Regulations may be brought and prosecuted by the Regulator or by any other person authorised by law to prosecute offences.

(3) If—

(a) the Regulator has made an application under Regulation 32 to the High Court to secure a person's compliance with an obligation or requirement imposed by or under, or a direction issued under, these Regulations, and

(b) a provision of these Regulations makes it an offence to fail to comply with the obligation, requirement or direction,

the Regulator may not bring proceedings against the person for such an offence or give a notice under section 44 of the Act of 2002 for failing to comply with the obligation, requirement or direction.

(4) An offence under these Regulations is an offence to which section 44 of the Act of 2002 applies.

Offences committed under these Regulations by bodies corporate

37. (1) If—

(a) an offence under these Regulations is committed by a body corporate, and

(b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other similar officer of the body, or is a person who was purporting to act in any such capacity,

that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if that person had committed the first-mentioned offence.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and omissions of a member of that body in connection with the member's functions of management as if the member were a director or manager of it.

(3) A person may be proceeded against for an offence under paragraph (1) whether or not the body corporate has been proceeded against or been convicted of the offence committed by the body.”.



GIVEN under my Official Seal,
28 June 2007

EAMON RYAN
Minister for Communications, Marine and Natural Resources

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations amend the European Communities (Electronic Communications Networks and Services) (Universal Services and Users Rights) Regulations 2003 (S.I. No. 308 of 2003) by:-

- (1) creating new summary offences,
- (2) increasing the penalties for new and existing summary offences,
- (3) creating certain indictable offences and providing for the penalties that may be imposed on conviction of these offences.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
51 ST. STEPHEN'S GREEN, DUBLIN 2
(Tel: 01-6476834/35/36/37; Fax: 01-6476843)
or through any bookseller.

€4.06

ISBN 1-4064-3214-8



9 781406 432145