



STATUTORY INSTRUMENTS.

**S.I. No. 372 of 2007**

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EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS  
NETWORKS AND SERVICES) (AUTHORISATION) (AMENDMENT)  
REGULATIONS 2007

(Prn. A7/1201)

**EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (AUTHORISATION) (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 2002/20/EC<sup>1</sup> of the European Parliament and of the Council of 7 March 2002, hereby make the following Regulations:

*Citation and commencement.*

1. (1) These Regulations may be cited as the European Communities (Electronic Communications Networks and Services) (Authorisation) (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)(Authorisation) Regulations 2003 (S.I. No. 306 of 2003).

*Amendment of Regulation 4 of the Principal Regulations (Authorisation of electronic communications networks and services).*

3. Regulation 4 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (5):

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

(5A) An offence under this Regulation is triable either summarily or on indictment.

(5B) If tried summarily, an offence under paragraph (5) is one of strict liability, but if the offence is tried on indictment, it is a defence to establish that reasonable steps were taken to comply with the paragraph concerned.

(5C) An undertaking found guilty of an offence under paragraph (5) is liable on conviction—

(a) if the offence is tried summarily, to a fine not exceeding €5,000, or

<sup>1</sup>O.J. L 108, 24.4.2002, p. 21

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

(b) if the offence is tried on indictment and the undertaking is a body corporate, 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 offence is tried on indictment and the undertaking is a natural person, to a fine not exceeding €500,000.

(5D) If, after being convicted of an offence under paragraph (5), an undertaking continues to fail to do the act required by paragraph (1) or (4), the undertaking commits a further offence on each day or part of a day during which the failure continues.

(5E) An undertaking found guilty of an offence under paragraph (5D) is liable on conviction for the offence—

(a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or

(b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

*Amendment of Regulation 8 of the Principal Regulations (Conditions attached to general authorisation).*

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

“(7) An undertaking that fails to comply with a condition attached to its general authorisation commits an offence.

(8) An offence under this Regulation is triable either summarily or on indictment.

(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 condition, or

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

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

(a) if the offence is tried summarily, to a fine not exceeding €5,000, or

(b) if the offence is tried on indictment and the undertaking is a body corporate, 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 offence is tried on indictment and the undertaking is a natural person, to a fine not exceeding €500,000.

(11) If, after being convicted of an offence under paragraph (7), an undertaking continues to fail to comply with the relevant condition, the undertaking commits a further offence on each day or part of a day during which the failure continues.

(12) An undertaking found guilty of an offence under paragraph (11) is liable on conviction for the offence—

(a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or

(b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

*Amendment of Regulation 14 of the Principal Regulations (Conditions attached to rights of use for numbers).*

5. Regulation 14 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (4):

“(4) An undertaking commits an offence if it fails to comply with a condition that the Regulator has attached to an undertaking’s right of use for numbers in accordance with paragraph (1).

(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 condition, or

(b) it was not possible for that condition 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 offence is tried on indictment and the undertaking is a body corporate, 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 offence is tried on indictment and the undertaking is a natural person, to a fine not exceeding €500,000.

(8) If, after being convicted of an offence under paragraph (4), an undertaking continues to fail to comply with the relevant condition, the undertaking commits a further offence on each day or part of a day during which the failure continues.

(9) An undertaking found guilty of an offence under paragraph (8) is liable on conviction for the offence—

(a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or

(b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

*Amendment of Regulation 23 of the Principal Regulations (Directions).*

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

(a) by inserting “(1)” before “The Regulator may”;

(b) by adding the following paragraphs at the end:

“(2) An undertaking that fails to comply with a direction issued to it 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.”.

*Substitution of Regulation 25 of the Principal Regulations.*

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

*"Prosecution of offences, etc.*

25. (1) If—

- (a) the Regulator has made an application under Regulation 16 to the High Court to compel a person to comply with a condition of a general authorisation, licence or right of use for numbers, and
- (b) a provision of these Regulations makes it an offence to fail to comply with the condition,

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 condition.

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

*Offences by bodies corporate*

25A. (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.”.

L.S.

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) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003) by:- (1)A creating new summary offences, (2) increasing the penalties for new and existing summary offences, (3) creating certain indictable and continuous offences and providing for the penalties that may be imposed on conviction of these offences.

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