



STATUTORY INSTRUMENTS.

S.I. No. 337 of 2011

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (UNIVERSAL SERVICE AND USERS'
RIGHTS) REGULATIONS 2011

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EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (UNIVERSAL SERVICE AND USERS' RIGHTS) REGULATIONS 2011

I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002¹ as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

Interpretation

2. (1) For the purpose of these Regulations the definitions set out in Regulation 2(1) of the Framework Regulations apply.

(2) In these Regulations—

“Act of 2002” means Communications Regulation Act 2002 (No. 20 of 2002);

“designated undertaking” means an undertaking designated under Regulation 7;

“Framework Regulations” means European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

“geographic number” means a number from the national numbering scheme where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);

“non-geographic number” means a number from the national numbering scheme that is not a geographic number and includes, among other things, a mobile, freephone and premium rate number;

“publicly available telephone service” means a service made available to the public for originating and receiving, directly or indirectly, national or international and international calls through a number or numbers in a national or international telephone numbering plan;

¹OJ L 108, 24.4.2002, p. 51

²OJ L 337 18.12.2009, p. 11

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 5th July, 2011.

“public pay telephone” means a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or prepayment cards, including cards for use with dialling codes;

“Regulations of 2003” means European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 (S.I. No. 308 of 2003);

“retail market” means a relevant market involving the provision of products or services to end-users;

“universal service obligation” means an obligation imposed on an undertaking under Regulation 3, 4, 5, 6, 8 or 9;

(3) A word or expression that is used in these Regulations and that is also used in the Universal Service Directive or in the Framework Regulations has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Directive or in those Regulations.

(4) In these Regulations a reference to an enactment or Regulations shall be construed as a reference to the enactment or Regulations as amended by any subsequent enactment or Regulations, including these Regulations.

(5) A reference in any enactment or Regulations to the Regulations of 2003 is to be construed as a reference to these Regulations.

Provision of access at a fixed location and provision of telephone services

3. (1) A designated undertaking shall satisfy any reasonable request to provide at a fixed location connection to a public communications network.

(2) A designated undertaking shall satisfy any reasonable request for the provision of a publicly available telephone service over the network connection referred to in paragraph (1) that allows for originating and receiving of national and international calls.

(3) A designated undertaking that provides a connection to the public communications network shall ensure that the connection is capable of supporting—

(a) voice,

(b) facsimile, and

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

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

(4) Where a designated undertaking denies any reasonable request made under paragraph (1) or (2) it shall inform the person making the request of his

or her right to pursue the dispute resolution procedures referred to in Regulation 27.

(5) The Regulator may, with the consent of the Minister, for the purpose of the services referred to in this Regulation, specify requirements to be complied with by a designated undertaking in relation to—

- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers in the State and to technological feasibility,
- (b) the reasonableness of requests for connection at a fixed location to a public communications network under paragraph (1) and the provision of a publicly available telephone service that allows for the originating and receiving of national and international calls referred to in paragraph (2), or
- (c) the terms and conditions upon which connection at a fixed location to a public communications network referred to in paragraph (1) and the provision of a publicly available telephone service over such a network connection that allows for the originating and receiving of national and international calls referred to in paragraph (2) shall be provided.

(6) A designated undertaking that fails to comply with the requirements of paragraph (1), (2), (3) or (4) commits an offence.

Directory enquiry services and directories

4. (1) A designated undertaking shall ensure, based on data provided to it in accordance with Regulation 19(4)—

- (a) that a comprehensive directory of subscribers is made available to all end-users in a form approved of by the Regulator, whether printed or electronic or both, and is updated at least once in each year, or
- (b) that a comprehensive telephone directory enquiry service is made available to all end-users, including users of public pay telephones.

(2) The designated undertaking concerned shall ensure that the directory or the directory enquiry 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 Privacy and Electronic Communications Regulations.

(3) A designated undertaking shall for the purpose of this Regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control.

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

Public pay telephones and other public voice telephony access points

5. (1) A designated undertaking shall ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services.

(2) The Regulator may, with the consent of the Minister, specify terms and conditions applicable to the provision of public pay telephones or other public voice telephony access points for the purpose of ensuring that the requirements specified in paragraph (1) are met.

(3) Where the Regulator determines, after consultation with the Minister and having regard to views expressed to it under a public consultation carried out in accordance with Regulation 26, that there exists a sufficient number of public pay telephones or other public voice telephony access points in any geographic area to satisfy the reasonable needs for such service in that area, taking into account the population density in such geographic area and the state of development of the communications market in that area, the Regulator may decide not to designate an undertaking under Regulation 7 for the purpose of paragraph (1) in relation to that area or a specified part of that area, as the case may be.

(4) (a) The Regulator shall conduct a review of any decision it makes under paragraph (3) as and when it considers appropriate.

(b) Where the Regulator makes a decision that the number of public pay telephones or other public voice telephony access points is no longer sufficient to serve the reasonable needs for such services in that area, the Regulator may designate an undertaking under Regulation 7 as having an obligation under paragraph (1) in respect of public pay telephones or other public voice telephony access points in that area.

(5) An undertaking providing public pay telephones shall ensure that it is possible to make emergency calls from a public pay telephone using the single European emergency call number “112” and any national emergency call number that may be specified by the Regulator, in each case, free of charge and without the necessity to use coins or cards or any other means of payment.

(6) Any undertaking providing public pay telephones shall ensure that the users of those telephones have access to a directory enquiry service referred to in Regulation 4.

(7) An undertaking that fails to comply with—

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

(b) a term or condition specified under paragraph (2),
commits an offence.

(8) 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 requirement, term or condition, or
- (b) it was not possible to comply with the relevant requirement, term or condition.

Measures for disabled end-users

6. (1) (a) Unless requirements have been specified under Regulations 14 to 25 which achieve the equivalent effect, the Regulator shall, with the consent of the Minister, specify obligations applicable to designated undertakings for the purpose of ensuring that disabled end-users can enjoy access to and affordability of the services identified in Regulations 3(2) and 4, equivalent to the level enjoyed by other end-users.

(b) For the purpose of subparagraph (a), the Minister may require the Regulator to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users, and the Regulator shall comply with such requirement.

(2) The Regulator may specify terms and conditions to be complied with by designated undertakings for the purpose of ensuring that disabled end-users can take advantage of the choice of undertakings and service providers available to the majority of end-users.

(3) In specifying obligations under paragraph (1) or terms and conditions under paragraph (2), the Regulator shall ensure, in so far as is practicable, that such obligations or terms and conditions are in compliance with any relevant standards or specifications referred to in Regulations 28 and 29 of the Framework Regulations.

(4) A designated undertaking that fails to comply with—

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

commits an offence.

(5) 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 term or condition, or

- (b) it was not possible to comply with the relevant obligation or term or condition.

Designation of undertakings

7. (1) The Regulator may designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation or requirement referred to in Regulation 3, 4(1)(a) or (b), an obligation or term or condition referred to in Regulation 5 or 6 and, where applicable, a requirement under Regulation 8(2), so that the whole of the State may be covered.

(2) The Regulator may designate different undertakings or sets of undertakings to comply with one or more of the obligations, requirements or terms or conditions referred to in paragraph (1) or to cover different parts of the State.

(3) In designating an undertaking under paragraph (1), the Regulator shall adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the obligations referred to in paragraph (1) are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 11.

(4) Where an undertaking designated in accordance with paragraph (1) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall notify the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date. Such notification shall include details as to the effect of the intended transaction on the provision of access at a fixed location under Regulation 3(1) and of telephone services under Regulation 3(2). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

Affordability of tariffs

8. (1) The Regulator shall monitor the evolution and level of retail tariffs of the services identified in Regulations 3, 4, 5 and 6, in particular in relation to national consumer prices and income, as either provided by designated undertakings or available on the market if no undertakings are designated in relation to those services.

(2) The Regulator may, in light of national conditions, specify, with the consent of the Minister, requirements to be complied with by a designated undertaking for the purpose of ensuring that such undertaking provides to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Regulation 3(1) or from using the services identified in Regulations 3(2), 4, 5 and 6 as falling under the universal service obligations and provided by designated undertakings.

(3) The Regulator may, with the consent of the Minister, require an undertaking designated by the Regulator under Regulation 7 to apply common tariffs

including geographical averaging throughout the State, in the light of national conditions.

(4) The conditions of any scheme to provide special tariff options, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Regulator may require, where it considers a scheme does not comply with this paragraph, that the scheme be modified or withdrawn.

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

(6) 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 to comply with the relevant requirement.

Control of expenditure

9. (1) A designated undertaking shall, where it provides facilities and services additional to those referred to in Regulations 3, 4, 5, 6 and 8(2), establish terms and conditions for the provision of such additional facilities and services in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested by him or her.

(2) A designated undertaking shall, for the purpose of ensuring that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service, provide the specific facilities and services set out in Schedule 1, Part A.

(3) The Regulator may waive any requirement imposed under paragraph (2) in relation to all or any part of the State if it is satisfied that the relevant facility or service is widely available in, or in any part of, the State.

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

(5) 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 requirement, or

(b) it was not possible to comply with the relevant requirement.

Quality of service of designated undertakings

10. (1) A designated undertaking with an obligation under Regulation 3, 4, 5, 6 or 8(2), as applicable, shall publish adequate and up to date information

concerning its performance in relation to the provision of universal service obligations and on measures taken to ensure equivalence in access for disabled end-users based on the quality of service parameters, definitions and measurement methods set out in Annex III to the Universal Service Directive and shall supply such published information to the Regulator.

(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.

(3) 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 referred to in paragraph (1).

(4) The Regulator may, in addition, specify the regularity, content, form and manner of information to be published, including possible quality certification mechanisms, under this Regulation for the purpose of ensuring that end-users, including disabled end-users, and consumers have access to comprehensive, comparable, reliable and user-friendly information.

(5) The Regulator may set performance targets for those designated undertakings in respect of the services referred to in Regulation 3 and in respect of such other services referred to in Regulations 4, 5, 6 and 8 as the Regulator deems appropriate from time to time. In so doing it shall have regard to any views expressed by interested parties, in particular under public consultations carried out in accordance with Regulation 26.

(6) The Regulator may arrange, or require an undertaking to which this Regulation refers to arrange, an independent audit or review, paid for by the undertaking concerned, of the performance data supplied to the Regulator by that undertaking to ensure the accuracy and compatibility of that data with the undertaking's universal service obligations.

(7) In the case of persistent failure by an undertaking to meet the performance targets referred to in paragraph (5), the Regulator may issue directions to the undertaking concerned for the purpose of ensuring compliance by the undertaking with the performance targets concerned.

(8) A designated undertaking that fails to comply with—

(a) the requirements of paragraph (1) or (3),

(b) a quality of service standard specified by the Regulator under paragraph (2),

(c) a requirement specified by the Regulator under paragraph (4) or (5),
or

(d) a direction issued by the Regulator under paragraph (7), commits an offence.

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

- (a) reasonable steps were taken to comply with the relevant specification, requirement or direction, or
- (b) it was not possible to comply with the relevant specification, requirement or direction.

Costing of universal service obligations

11. (1) Where an undertaking designated as having an obligation under Regulation 3, 4, 5, 6, 8 or 9 seeks to receive funding for the net costs of meeting the obligation concerned, it may submit to the Regulator a written request for such funding.

(2) A request under paragraph (1) shall be accompanied by such supporting information as may be reasonably required by the Regulator for the purpose of paragraph (3). The data may be based on such period as may be specified by the Regulator.

(3) The Regulator shall, on the basis of such information, including information supplied under paragraph (2), as it considers sufficient to enable a determination under this paragraph to be made, determine whether an obligation referred to in paragraph (1) may represent an unfair burden on the undertaking concerned.

(4) Where the Regulator determines that an obligation referred to in paragraph (1) may represent an unfair burden, it shall calculate the net costs of its provision based on—

- (a) the net costs, taking into account any market benefit which accrues to the undertaking, calculated in accordance with Schedule 2, Part A, or
- (b) where applicable, the net costs identified by a designation method in accordance with Regulation 7(3).

(5) A designated undertaking referred to in paragraph (1) shall provide such information as is reasonably required by the Regulator for the purpose of paragraph (4).

(6) Where the Regulator determines that an obligation referred to in paragraph (1) does not represent an unfair burden, it shall notify the undertaking concerned of that determination together with the reasons for the determination as soon as reasonably practicable after the determination is made.

(7) The accuracy of the accounts or other information, serving as the basis for the calculation of the net cost of an obligation, shall be audited or verified,

as appropriate, by the Regulator or by a body approved of by the Regulator and independent of the undertaking concerned.

(8) The Regulator shall make publicly available the results of the cost calculations and the conclusions of any audit or verification undertaken under this Regulation.

Financing of universal service obligations

12. (1) Where the Regulator, on the basis of the net cost calculation referred to in Regulation 11, finds that the net cost of meeting an obligation under Regulation 3, 4, 5, 6, 8 or 9 represents an unfair burden on an undertaking it shall apportion the net cost of the universal service obligation among providers of electronic communications networks and services.

(2) The Regulator shall establish a sharing mechanism administered by it or by a body independent from the designated undertakings, which body shall be under the supervision of the Regulator. Only the net cost, as determined in accordance with Regulation 11, of the obligations provided for in Regulation 3, 4, 5, 6, 8 or 9 may be financed.

(3) A sharing mechanism established under paragraph (2) shall respect the principles of transparency, least market distortion, non-discrimination and proportionality in accordance with the principles of Schedule 2, Part B. The Regulator may choose not to require contributions from undertakings whose audited national turnover is less than such amount as may, from time to time, be specified by the Regulator, having regard to any views expressed to it under any consultations carried out in accordance with Regulation 26.

(4) Any charges related to the sharing of the cost of universal service in accordance with an apportionment under paragraph (1) shall be unbundled and identified separately for each undertaking.

(5) The Regulator shall not impose any charges under this Regulation on undertakings that are not providing services within the State.

(6) The Regulator shall notify each undertaking required to share the cost of a universal service obligation of that undertaking's obligation to contribute to such cost including the amount, manner and timing of payments to be made.

(7) An undertaking which has been notified of its obligation to contribute an amount specified by the Regulator under paragraph (6) shall pay that amount in the time and manner specified by the Regulator.

(8) Any amount payable to the Regulator under this Regulation that remains unpaid may be recovered by the Regulator as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840 on the amount or part of it remaining unpaid in respect of the period between the date when such amount or part of it fell due and the date of payment of such amount or part.

(9) The Regulator shall, subject to the protection of the confidentiality of any information which it considers confidential, publish an annual report setting out the calculated net cost of universal service obligations, identifying the contributions made by all the undertakings involved and identifying any market benefits that may have accrued to any undertaking designated by the Regulator under Regulation 7.

(10) The Regulator shall, subject to the Freedom of Information Acts 1997 and 2003, accept as confidential any information provided under these Regulations by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Regulator has good reason to consider otherwise.

(11) The Regulator shall publish and make publicly available all information in relation to the principles used for cost sharing, including the details of the mechanism used.

(12) An undertaking that fails to comply with a requirement imposed under paragraph (7) commits an offence.

Regulatory controls on retail markets

13. (1) Where—

- (a) the Regulator determines, as a result of market analysis carried out by it in accordance with Regulation 27 of the Framework Regulations, that a given retail market identified in accordance with Regulation 26 of the Framework Regulations is not effectively competitive, and
- (b) the Regulator concludes that obligations imposed under Regulations 9 to 13 of the Access Regulations would not result in the achievement of the objectives set out in section 12 of the Act of 2002 and Regulation 16 of the Framework Regulations,

the Regulator shall impose such obligations, as it considers appropriate to achieve those objectives, on undertakings identified by the Regulator under Regulation 27(4) of the Framework Regulations as having significant market power on a given retail market.

(2) Any obligations imposed by the Regulator under paragraph (1) shall be based on the nature of the problem identified under the market analysis and be proportionate and justified in the light of the objectives set out in section 12 of the Act of 2002 and Regulation 16 of the Framework Regulations and may include requirements to ensure that the undertaking concerned does not—

- (a) charge excessive prices,
- (b) inhibit market entry or restrict competition by setting predatory prices,

(c) show undue preference to specific end-users, or

(d) unreasonably bundle services.

(3) The Regulator may require an undertaking to which paragraph (1) applies to comply with—

(a) measures to control individual tariffs,

(b) retail price cap measures, or

(c) measures to orient tariffs towards costs or prices on comparable markets,

in order to protect end-users' interests whilst promoting effective competition.

(4) An undertaking that is subject to retail tariff regulation or other relevant retail controls shall operate and maintain a cost accounting system that is—

(a) based on generally accepted accounting practices,

(b) suitable for ensuring compliance with this Regulation, and

(c) capable of verification by the Regulator.

(5) The Regulator may specify the format and accounting methodology to be used by an undertaking to which paragraph (4) applies.

(6) Compliance by an undertaking with a cost accounting system referred to in paragraph (4) shall be verified by a qualified independent body. For this purpose, the Regulator may carry out an audit itself, provided it has the necessary qualified staff, or it may require an audit to be carried out by another qualified body, independent of the undertaking concerned.

(7) An undertaking to which paragraph (4) applies shall publish in its annual accounts a statement concerning compliance by it with a cost accounting system referred to in paragraph (4).

(8) Without prejudice to Regulations 8(2) and 9, the Regulator shall not apply retail control mechanisms under paragraph (1) in a relevant market in relation to which the Regulator is satisfied that effective competition exists.

(9) An undertaking that fails to comply with—

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

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

commits an offence.

(10) An undertaking that fails to comply with the requirements of paragraph (4) or (7) commits an offence.

(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 obligation or requirement, or
- (b) it was not possible to comply with the relevant obligation or requirement.

Contracts

14. (1) An undertaking that provides to consumers, and other end-users so requesting, connection to a public communications network or publicly available electronic communications services shall do so in accordance with a contract that complies with paragraph (2).

(2) A contract referred to in paragraph (1) shall specify in a clear, comprehensive and easily accessible form, at least—

- (a) the identity and address of the undertaking,
- (b) the services provided including, in particular—
 - (i) whether or not access to emergency services and caller location information is being provided and any limitations on the provision of emergency services under Regulation 20,
 - (ii) information on any other conditions limiting access to, or use of, services and applications where such conditions are permitted under national law in accordance with European Union law,
 - (iii) the minimum service quality levels offered, namely, the time for the initial connection and, where appropriate, other quality of service parameters as defined by the Regulator from time to time,
 - (iv) information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link and information on how those procedures could impact on service quality,
 - (v) the types of maintenance service offered and customer support services provided, as well as the means of contacting those services, and
 - (vi) any restrictions imposed by the provider on the use of terminal equipment supplied,
- (c) where an obligation exists under Regulation 19, the subscriber's options as to whether or not to include his or her personal data in a directory and the data concerned,

- (d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method,
- (e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including—
 - (i) any minimum usage or duration required to benefit from promotional terms,
 - (ii) any charges related to portability of numbers and other identifiers, and
 - (iii) any charges due on termination of the contract including any cost recovery with respect to terminal equipment,
- (f) any compensation and refund arrangements which apply if contracted service quality levels are not met,
- (g) the means of initiating procedures for settlement of disputes in accordance with Regulation 27, and
- (h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

(3) The Regulator may require that a contract referred to in paragraph (1) shall include any information, which may be provided by relevant public authorities for the purpose of a contract under this Regulation on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content and on the means of protection against risks to personal security, privacy and personal data, referred to in Regulation 15(8) and relevant to the service provided.

(4) An undertaking referred to in paragraph (1) shall, not less than one month prior to the date of implementation of any modification to the contractual conditions proposed by the undertaking, notify its subscribers to that service of—

- (a) the proposed modification in the conditions of the contract for that service, and
- (b) their right to withdraw without penalty from such contract if they do not accept the modification.

(5) The Regulator may specify the format of notifications referred to in paragraph (4).

(6) A subscriber referred to in paragraph (4) may withdraw from his or her contract with the undertaking or provider without penalty if he or she does not accept a proposed modification referred to in paragraph (4).

(7) An undertaking that fails to comply with the requirements of paragraph (1) or (4) commits an offence.

(8) 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 requirement, or

(b) it was not possible to comply with the relevant requirement.

Transparency and publication of information and quality of service

15. (1) The Regulator may require undertakings providing public electronic communications networks or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to and use of services provided by them to end-users and consumers.

(2) The Regulator may require an undertaking providing public electronic communications networks or publicly available electronic communications services to provide to end-users and consumers, in such form as the Regulator may specify, such of the information set out in Schedule 3 as the Regulator may specify.

(3) The information made available under paragraphs (1) and (2) shall be published in a clear, comprehensive and easily accessible form.

(4) The Regulator shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance, by means of interactive guides or similar techniques.

(5) Where the facilities referred to in paragraph (4) are not available on the market free of charge or at a reasonable price, the Regulator may provide such guides or techniques either itself or by way of third party procurement. Where the guides or techniques are to be provided through third party procurement, the third parties shall, for the purpose of selling or making available such guides or techniques have the right to use, free of charge, the information published by undertakings providing electronic communications networks or publicly available electronic communications services.

(6) The Regulator may require an undertaking providing public electronic communications networks or publicly available electronic communications services, among other things, to—

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, the Regulator may require such information to be provided immediately prior to connecting the call,

- (b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed,
- (c) inform subscribers of any change to conditions limiting access to or use of services and applications where conditions are permitted under national law in accordance with European Union law,
- (d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link and on how those procedures could impact on service quality,
- (e) inform subscribers of their right to determine whether or not to include their personal data in a directory and of the types of data concerned in accordance with Regulation 12 of the Privacy and Electronic Communications Regulations, and
- (f) regularly inform disabled subscribers of details of products and services designed for their requirements.

(7) The Regulator may, if it considers it appropriate to do so, promote self or co-regulatory measures prior to requiring an undertaking to act in accordance with paragraph (6).

(8) (a) The Regulator may, at its own initiative or at the request of the Minister, require an undertaking providing public electronic communications networks or publicly available electronic communications services to distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by the undertaking in its communications with subscribers.

(b) Public interest information provided to an undertaking for the purpose of subparagraph (a) shall be provided in a standardised format and shall, among other things, cover the following topics—

- (i) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences, and
- (ii) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

(9) The Regulator may specify obligations to be complied with by an undertaking providing publicly available electronic communications networks or publicly available electronic communications services requiring such undertaking to publish comparable, adequate and up-to-date information for end-users on the

quality of its services and on measures taken to ensure equivalence in access for disabled end-users.

(10) The Regulator may require an undertaking to which paragraph (9) relates to supply such information to the Regulator in advance of its publication.

(11) An undertaking shall comply with any requirement made of it under paragraph (2), (6), (14) or an obligation imposed under paragraph (9) within such reasonable period as the Regulator may specify.

(12) The Regulator shall, before specifying obligations under paragraph (9), have regard to any views expressed to it under any public consultation carried out by it in accordance with Regulation 26.

(13) For the purpose of paragraph (9), the Regulator may specify, among other things, the quality of service parameters to be measured and the content, form and manner of information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information and, where it considers it appropriate, the Regulator may specify that the quality of service parameters, definitions and measurement methods set out in Annex III to the Universal Service Directive should be used.

(14) (a) In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, the Regulator may set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

(b) Within a reasonable time prior to setting any of the requirements referred in subparagraph (a), the Regulator shall provide the European Commission with a summary of the grounds for action, the envisaged requirements and the proposed course of action. The Regulator shall also ensure that such information is made available to BEREC.

(c) The Regulator shall take the utmost account of the European Commission's comments or recommendations on the information provided under subparagraph (b) when deciding on the requirements referred to in subparagraph (a).

(15) An undertaking that fails to comply with an obligation imposed under paragraph (9) commits an offence.

(16) In proceedings for an offence under paragraph (15) it is a defence to establish that—

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

(b) it was not possible to comply with the relevant obligation.

Availability of services

16. (1) (a) Undertakings shall ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances.

(b) The Regulator may specify requirements to be complied with by undertakings for the purpose of subparagraph (a).

(2) An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.

Ensuring equivalence in access and choice for disabled end-users

17. (1) The Regulator may, where appropriate, specify requirements to be complied with by undertakings providing publicly available electronic communications services in order to ensure that disabled end-users—

(a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users, and

(b) benefit from the choice of undertakings and services available to the majority of end-users.

(2) The Regulator shall encourage the availability of terminal equipment offering the necessary services and functions in order to be able to adopt and implement specific arrangements for the requirements of disabled end-users.

Interoperability of consumer digital television equipment

18. (1) A person who places on the market for sale or rent or otherwise makes available consumer equipment intended for the reception of digital television signals (that is, broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C, or DVB-S) that is capable of descrambling digital television signals shall ensure that such equipment possesses the capability to—

(a) allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognised European standards organisation, and

(b) display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the person renting is in compliance with the relevant rental agreement.

(2) Paragraph (1) does not apply to consumer equipment first placed on the market for sale or for rent or otherwise in the European Union before 23 August 1996.

(3) A person who places on the market for sale or rent or otherwise an analogue television set with an integral viewing screen of visible diagonal greater than 42 centimetres shall ensure that the set is fitted with at least one open interface socket (as standardised by a recognised European standards

organisation) permitting simple connection of peripherals, in particular additional decoders and digital receivers.

(4) Paragraph (3) does not apply to an analogue television set that was placed on the market for sale or rent in the European Union before 23 August 1996.

(5) A person who places on the market for sale or rent a digital television set with an integral screen of visible diagonal greater than 30 centimetres shall ensure that the set is fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation or conforming to an industry-wide specification (for example, a DVB common interface connector)) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal, including information relating to interactive and conditionally accessed services.

(6) Paragraph (5) does not apply to a digital television set that was placed on the market for sale or rent in the European Union before 25 April 2002.

(7) In this Regulation “rent” in relation to any television set or other equipment means the supplying to a customer of that set or equipment under a rental agreement.

(8) It shall be a function of the National Consumer Agency to monitor compliance with paragraphs (3) and (5).

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

(10) 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 requirement, or
- (b) it was not possible to comply with the relevant requirement.

Telephone directory enquiry services

19. (1) An undertaking providing a publicly available telephone service shall ensure that its subscribers have the right, without charge, to have an entry in a directory as provided for in Regulation 4(1)(a), a directory enquiry service as provided for in Regulation 4(1)(b) and to have their information made available to providers of directory enquiry services or directories in accordance with paragraph (2).

(2) An undertaking that assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purpose of the provision of publicly available directory enquiry services, directories and the record referred to in paragraph (4), the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory.

(3) An undertaking providing a publicly available telephone service to end-users shall ensure that all such end-users can access directory enquiry services in accordance with Regulation 4. In accordance with Regulation 6 of the Access Regulations, the Regulator may impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services and any such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

(4) Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, an undertaking that may be required to do so by the Regulator shall keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record, and shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator.

(5) The Regulator shall not maintain any regulatory restriction which prevents an end-user in the State from accessing directly, by voice call or SMS, a directory enquiry service in another Member State or an end-user in another Member State from accessing directly directory enquiry services in the State and shall take measures to ensure such access in accordance with Regulation 23.

(6) This Regulation applies subject to the requirements of European Union legislation on the protection of personal data and privacy and in particular Regulation 12 of the Privacy and Electronic Communications Regulations.

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

(8) 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 requirement, or

(b) it was not possible to comply with the relevant requirement.

Single European emergency call number

20. (1) An undertaking providing end-users with an electronic communications service for originating national calls to a number or numbers in the national numbering scheme (including public pay telephones) shall ensure that such end-users are able to call the emergency services free of charge and without having to use any means of payment by using the single European emergency call number “112” and any national emergency call number that may be specified by the Regulator.

(2) (a) Undertakings providing an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan (including public pay telephones) shall ensure that disabled end-users can enjoy access to emergency services equivalent to that enjoyed by other end-users.

(b) The Regulator may, following consultation with the Minister, specify obligations applicable to undertakings for the purpose of compliance with subparagraph (a). Any obligation specified in order to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall be based to the greatest extent possible on, but not limited to, European standards or specifications published in accordance with the provisions of Article 17 of the Framework Directive.

(3) An undertaking providing end-users with an electronic communications service for originating national calls to a number or numbers in the national telephone numbering plan (including public pay telephones) shall make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This obligation shall apply to all calls to the single European emergency call number “112” and any national emergency call number that may be specified by the Regulator.

(4) For the purpose of paragraph (3), the Regulator shall, in consultation with the Minister, lay down criteria pertaining to the accuracy and reliability of the caller location information provided and the undertaking referred to in paragraph (3) shall comply with such criteria.

(5) The Regulator may, in consultation with the Minister, specify obligations for compliance by undertakings of any particular class or classes that may be specified by the Regulator for the purpose of ensuring that members of the public are adequately informed about the existence and use of the single European emergency call number “112”, in particular through initiatives specifically targeting persons travelling between Member States.

(6) An undertaking that fails to comply with—

(a) a requirement of paragraph (1), (2), (3) or (4), or

(b) an obligation specified under paragraph (5),

commits an offence.

(7) 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 requirement or obligation, or

(b) it was not possible to comply with the relevant requirement or obligation.

European telephone access codes

21. (1) The Regulator shall ensure that the “00” code is the standard international access code.

(2) Notwithstanding paragraph (1), the Regulator may specify requirements for compliance by undertakings for the purpose of ensuring that special arrangements for making calls between the State and Northern Ireland may be established or continued and that the end-users of publicly available telephone services in the State are fully informed of such arrangements.

(3) An undertaking providing publicly available telephone services allowing international calls shall handle all calls to and from the European Telephony Numbering Space at rates similar to those applied for calls to and from other Member States.

(4) The Regulator may specify requirements for the purpose of ensuring compliance by an undertaking with paragraph (3).

(5) An undertaking that fails to comply with—

(a) a requirement specified under paragraph (2) or (4), or

(b) the requirements of paragraph (3),

commits an offence.

(6) 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 to comply with the relevant requirement.

Harmonised numbers for harmonised services of social value

22. (1) The Regulator shall promote the specific numbers in the numbering range beginning with “116” identified by European Commission Decision 2007/116/EC of 15 February 2007³.

(2) The Regulator shall, in accordance with Regulation 14 of the Authorisation Regulations, specify conditions applicable to the use of harmonised numbers referred to in paragraph (1) for the purpose of ensuring that disabled end-users are able to access such services to the greatest extent possible. Any conditions so specified that facilitate disabled end-users’ access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 17 of the Framework Directive.

³OJ L 49, 17.02.2007, p. 30

Access to numbers and services

23. (1) The Regulator may, where technically and economically feasible and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, specify requirements for compliance by an undertaking operating a public telephone network or providing publicly available telephone services for the purpose of ensuring that end-users are able to—

- (a) access and use services using non-geographic numbers within the European Union, and
- (b) access all numbers provided in the European Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, those from the European Telephony Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN).

(2) The Regulator may require undertakings providing public communications networks or publicly available electronic communications services to block, on a case by case basis, access to numbers or services where this is justified by reason of fraud or misuse and to require undertakings to withhold relevant interconnection or other service revenues.

Provision of additional facilities

24. (1) Without prejudice to Regulation 9(2) and subject to paragraph (3), the Regulator may specify that all undertakings providing publicly available telephone services or access to public communications networks are required to make available—

- (a) all or part of the additional facilities listed in Schedule 1, Part B, subject to technical feasibility and economic viability, and
- (b) all or part of the additional facilities and services listed in Schedule 1, Part A.

(2) An undertaking shall comply with any requirement made of it under paragraph (1) within such reasonable period as the Regulator shall specify.

(3) Where an undertaking referred to in paragraph (1) considers that it is not technically feasible or economically viable to provide all or part of the additional facilities listed in Schedule 1, Part B, it shall notify the Regulator of the fact and give reasons including all relevant information in support of its views.

(4) The Regulator shall consider the information given to it under paragraph (3) and any other information it considers relevant and shall either agree or disagree with the decision of the undertaking.

(5) Where the Regulator disagrees with the decision of the undertaking as aforesaid, it may issue a direction to that undertaking to provide all or part of the additional facilities listed in Schedule 1, Part B.

(6) If the Regulator considers, after taking into account any views expressed to it under a public consultation carried out in accordance with Regulation 26, that there is sufficient access to the facilities referred to in paragraph (1) in all or in any part of the State, it may disapply paragraph (1) in relation to the whole or any such part of the State.

(7) An undertaking that fails to comply with—

- (a) a requirement specified under paragraph (1), or
- (b) a direction issued to it under paragraph (5),

commits an offence.

(8) 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 requirement or direction, or
- (b) it was not possible to comply with the relevant requirement or direction.

Facilitating change of service provider

25. (1) Undertakings shall ensure that a subscriber with a number from the national numbering scheme can, upon request, retain his or her number independently of the undertaking providing the service—

- (a) in the case of geographic numbers, at a specific location, and
- (b) in the case of non-geographic numbers, at any location.

This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

(2) Undertakings to which paragraph (1) relates shall ensure that pricing between operators or service providers related to the provision of number portability as provided for in paragraph (1) is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for subscribers changing service provider.

(3) The Regulator shall ensure that undertakings comply with their obligations under paragraph (2) and the Regulator may issue directions to an undertaking to which paragraph (2) relates to require that there shall be no direct charges to subscribers for number portability. Where retail tariffs for porting of numbers are permitted, the Regulator shall ensure that such tariffs may not be imposed in a manner that would distort competition and for this purpose may specify obligations to be complied with by an undertaking.

(4) Undertakings referred to in paragraph (1) shall ensure that—

- (a) the porting of numbers and their subsequent activation shall be carried out within the shortest possible time,
- (b) in the case where a subscriber has concluded an agreement to port a number to a new undertaking, that number shall be activated within one working day, and
- (c) loss of service during the porting process shall not exceed one working day.

(5) Without prejudice to paragraph (4), the Regulator may establish the global process of porting of numbers, taking into account provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber. These procedures shall specify that loss of service during the process shall not exceed one working day in accordance with paragraph (4). The Regulator shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and not switched against their will.

- (6) (a) An undertaking providing electronic communications services shall not conclude contracts with consumers which mandate an initial commitment period that exceeds 24 months and shall offer users the possibility to subscribe to a contract with a maximum duration of 12 months.
- (b) Without prejudice to any minimum contractual period the undertaking shall ensure that conditions and procedures for contract termination do not act as a disincentive to a consumer to changing service provider.

(7) The obligations referred to in this Regulation apply to all undertakings with a role in facilitating change of provider, including the operator to which the subscriber is porting and the operator from which the subscriber is porting and any wholesale operator with involvement in the process.

(8) An undertaking that fails to comply with—

- (a) the requirements of paragraph (1),
- (b) a direction of the Regulator under paragraph (3), or
- (c) the requirements of paragraph (2), (4) or (6)

commits an offence.

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

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

- (b) it was not possible to comply with the relevant requirement or direction.

(10) Undertakings shall compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf. The Regulator may specify requirements to be complied with by undertakings in relation to this obligation including, but not limited to, arrangements for the payment of compensation to subscribers. Any dispute in relation to compensation payable under this paragraph shall be subject to Regulation 27.

Consultation with interested parties

26. (1) For the purpose of its functions under these Regulations, the Regulator shall, where specified in these Regulations and otherwise where it considers it appropriate, have regard to the views of—

- (a) end-users,
- (b) consumers (including, in particular, disabled consumers), and
- (c) manufacturers and undertakings that provide electronic communications networks or services,

on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market, in accordance with such procedures as may be drawn up by the Regulator under Regulation 12(5) of the Framework Regulations.

(2) The Regulator shall establish a consultation mechanism to ensure that, when taking decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

(3) Without prejudice to national rules in conformity with European Union law promoting cultural and media policy objectives such as cultural and linguistic diversity and media pluralism, the Regulator may promote co-operation between undertakings providing electronic communications networks or services and sectors interested in the promotion of lawful content in electronic communications networks and services. Such co-operation may include co-ordination of the public interest information referred to in Regulations 14(3) and 15(8).

Dispute resolution

27. (1) Without prejudice to any legal rights of action which may apply, an undertaking providing electronic communications networks or services shall implement a code of practice for settling unresolved disputes, including complaints, between end-users and the undertaking arising under these Regulations and relating to the contractual conditions or performance of contracts concerning the supply of electronic communications networks or services and any other issues arising under, or covered by, these Regulations. The code of practice shall make provision for the following matters—

- (a) first point of contact for complainants,

- (b) a means of recording complaints,
 - (c) a timeframe within which the undertaking concerned shall respond to complaints,
 - (c) procedures for resolving complaints, including a timeframe for referring the customer to the Regulator which shall be no more than 10 working days from the day a complaint is first notified,
 - (d) appropriate cases where reimbursement of payments, payments of compensation and payments in settlement of losses incurred will be made, and
 - (e) retention of records of complaints (including copies of the complaint, any response to it, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint.
- (2) The Regulator may specify requirements to be met for the purpose of ensuring compliance with paragraph (1) and the manner of publication of a code of practice referred to in paragraph (1) including, without limitation, any requirements to ensure that the code of practice and procedures for settling unresolved disputes are fair, prompt, transparent, inexpensive and non-discriminatory.
- (3) The Regulator may issue directions to an undertaking to which paragraph (1) relates to require that undertaking to make such alterations or additions to its code of practice as the Regulator considers appropriate and specifies in the directions.
- (4) The Regulator, or an independent person appointed by the Regulator, may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1) and, in this regard, the Regulator may issue directions to an undertaking requiring that undertaking to comply with such measures as it or the independent person may specify for the resolution of the dispute including, where appropriate, reimbursement of payments, payments of compensation and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in paragraph (1)(e).
- (5) The Regulator shall make publicly available any procedures established by it under paragraph (4) and any amendments to such procedures.
- (6) The procedures established for the purpose of paragraphs (1), (3) and (4) shall be—
- (a) transparent,
 - (b) non-discriminatory,

- (c) simple,
- (d) inexpensive, and
- (e) enable disputes to be settled fairly and promptly.

(7) A person may, where the dispute involves undertakings in more than one Member State, request that the Regulator co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

(8) Unless alternative arrangements for payment of remuneration and expenses of an independent person referred to in paragraph (4) exist, the Regulator may pay such remuneration and expenses of such person as it considers appropriate and the amount of such payments shall be included in the expenses of the Regulator for the purpose of section 30 of the Act of 2002.

(9) An undertaking that fails to comply with—

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

commits an offence.

(10) 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 requirement or direction, or
- (b) it was not possible to comply with the relevant requirement or direction.

Notification, monitoring and review procedures

28. (1) The Regulator shall notify to the European Commission the names of undertakings that have been designated under Regulation 7(1).

(2) The Regulator shall notify to the European Commission the universal service obligations imposed on undertakings designated as having universal service obligations under these Regulations.

(3) The Regulator shall notify to the European Commission, without delay, any changes in the names notified under paragraph (1) or the obligations imposed under paragraph (2).

Notices regarding imposition of obligations

29. (1) Where in these Regulations the Regulator specifies or imposes obligations or requirements to be complied with, the Regulator shall cause to be

published in a newspaper published and circulating in the State, in the *Iris Oifigiúil* and on its website notice of the obligations or requirements and such notice shall include information on where copies of the obligations or requirements can be obtained.

(2) The Regulator may amend or revoke any notice of obligations or requirements referred to in paragraph (1) and paragraph (1) applies to any such amendment or revocation.

Directions

30. The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.

Enforcement — compliance with obligations

31. (1) The Regulator shall monitor compliance with these Regulations, other than Regulation 18(3) and (5).

(2) Where the Regulator finds that an undertaking has not complied with an obligation, term or condition, requirement, specification or direction under these Regulations, the Regulator shall notify the undertaking of those findings and give the undertaking an opportunity to state its views or, if the non-compliance can be remedied, to remedy the non-compliance within a reasonable time limit as specified by the Regulator.

(3) The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Regulator considers confidential.

(4) The Regulator may amend or revoke any notification under this Regulation.

(5) Where, at the end of the period specified by the Regulator under paragraph (2), the Regulator is of the opinion that the undertaking concerned has not complied with an obligation, term or condition, requirement, specification or direction, the Regulator may, whether or not the non-compliance is continuing, subject to paragraph (10), apply to the High Court for such order as the Regulator considers appropriate including—

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation, term or condition, requirement, specification or direction,
- (c) an order directing the remedy of any non-compliance with the obligation, term or condition, requirement, specification or direction, or
- (d) an order as provided for in paragraph (9).

(6) The High Court may, on the hearing of the application referred to in paragraph (5), make such order as it thinks fit which may include—

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation, term or condition, requirement, specification or direction,
- (c) an order directing the remedy of any non-compliance with the obligation, term or condition, requirement, specification or direction, or
- (d) an order as provided for in paragraph (9),

or refuse the application.

An order of the High Court compelling compliance may stipulate that the obligation, term or condition, requirement, specification or direction must be complied with immediately or may specify a reasonable time limit for compliance and may also stipulate appropriate and proportionate measures aimed at ensuring compliance.

(7) The High Court when dealing with an application under paragraph (5) may make such interim or interlocutory order as it considers appropriate.

(8) The High Court shall not deny interim or interlocutory relief, referred to in paragraph (7), solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.

- (9) (a) An application for an order under paragraph (5) may be for, or include an application for, an order to pay to the Regulator such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the obligation, term or condition, requirement, specification or direction, as the Regulator may propose as appropriate in the light of the non-compliance or any continuing non-compliance. Such an application for an order in respect of a financial penalty for a period of non-compliance may be made even if there since has been compliance with the obligation, term or condition, requirement, specification or direction.
- (b) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the sum proposed by the Regulator.
- (c) Any financial penalty ordered by the High Court to be paid by an undertaking under this paragraph shall be paid to and retained by the Regulator as income.
- (d) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—
 - (i) its duration,

- (ii) the effect on consumers, users and other operators,
- (iii) the submissions of the Regulator on the appropriate amount, and
- (iv) any excuse or explanation for the non-compliance.

(10) Where 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 an alleged offence under these Regulations, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the undertaking with the obligation to which the proceedings or notice relates.

Enforcement by National Consumer Agency

32. (1) The National Consumer Agency, in a case of non-compliance with Regulation 18(3) or (5), may issue a direction to the undertaking concerned to comply with the Regulation and any stipulations contained in the direction.

(2) The National Consumer Agency may appoint a person to be an authorised officer for the purpose of Regulation 18(3) or (5).

(3) Section 39 (2), (3), (4) and (5) and sections 40 and 41 of the Act of 2002 apply in respect of an authorised officer appointed under paragraph (2) and, for the purpose of this Regulation, references to the Commission for Communications Regulation or Commission in those provisions should be read as including references to the National Consumer Agency.

Service of determinations, directions and notifications

33. (1) Where a determination, direction or notification is made under these Regulations, such determination, direction or notification shall be in writing, state the reasons on which it is based and be addressed to the undertaking concerned and, as soon as practicable, be sent or given in any of the following ways—

- (a) by delivering it to the undertaking,
- (b) by leaving it at the address at which the undertaking ordinarily carries on business,
- (c) by sending it by pre-paid registered post addressed to the undertaking at the address at which the undertaking ordinarily carries on business,
- (d) if an address for the service of determinations, directions or notifications has been furnished by the undertaking to the Regulator, by leaving it at, or sending it by pre-paid registered post to, that address, or
- (e) in any case where the Regulator considers that the immediate giving of the determination, direction or notification is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at

the address at which the undertaking ordinarily carries on business or, if an address for the service of notices has been furnished by the undertaking, that address, but only if—

- (i) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the determination, direction or notification, or
- (ii) the recipient's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail,

and it is also given in one of the other ways mentioned in subparagraphs (a) to (d).

(2) In paragraph (1), a company within the meaning of the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Offence not to comply with requirement of National Consumer Agency

34. (1) A person who fails to comply with a direction of the National Consumer Agency under Regulation 32(1) commits an offence.

(2) 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 direction, or
- (b) it was not possible to comply with the relevant direction.

Prosecution of offences

35. (1) Proceedings for an offence under—

- (a) Regulation 34,
- (b) section 39(6) of the Act of 2002 relating to an authorised officer appointed under Regulation 32(2),

may be brought and prosecuted by the National Consumer Agency 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 31 to the High Court to secure an undertaking's compliance with an obligation, term or condition, requirement, specification or direction imposed by or under these Regulations, and

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

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

Offences committed by bodies corporate

36. (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.

Penalties

37. (1) An undertaking that commits an offence under these Regulations (other than under Regulation 25) is liable on summary conviction to a class A fine.

(2) An undertaking that commits an offence under Regulation 25 is liable, on summary conviction, to a class A fine or, on conviction on indictment—

- (a) in the case of a body corporate, to a fine not exceeding €500,000, or
- (b) in the case of a natural person, to a fine not exceeding €50,000.

Transitional arrangements

38. (1) A measure that was in force under the Regulations of 2003 immediately before the coming into operation of these Regulations shall continue in force as if it was made under these Regulations.

(2) For the purpose of this Regulation, “measure” means a decision, designation, determination, direction, notice, notification (other than a notification under Regulation 32(2) of the Regulations of 2003), requirement, specification or other act of an equivalent effect made by the Regulator.

(3) Notwithstanding the revocation of the Regulations of 2003, notifications by the Regulator on a person under Regulation 32(2) of those Regulations—

(a) continue in force, and

(b) may continue to be issued, revoked or amended,

as if the Regulations of 2003 had not been revoked.

Revocations

39. The following Regulations are revoked:

(a) the Regulations of 2003; and

(b) the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) (Amendment) Regulations 2007 (S.I. No. 374 of 2007).

SCHEDULE 1

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN
REGULATIONS 9 AND 24*Regulations 9(2) and 24***Part A: Facilities and services referred to in Regulation 9:***(a)* Itemised Billing.

The Regulator may, subject to the requirements of relevant legislation on the protection of personal data and privacy, lay down the basic level of itemised bills which are to be provided by undertakings to subscribers free of charge in order that they can—

- (i) allow verification and control of the charges incurred in using the public communications network at a fixed location or related publicly available telephone services, and
- (ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge.

Calls which are free of charge to the calling subscriber, including calls to helplines, are not to be identified in the calling subscriber's itemised bill.

(b) Selective barring for outgoing calls or premium SMS or MMS or, where technically feasible, other kinds of similar applications, free of charge.

i.e. the facility whereby a subscriber can, on request to the designated undertaking that provides telephone services, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems.

The Regulator may require designated undertakings to allow consumers to pay for access to the public communications network and use of publicly available telephone services on pre-paid terms.

(d) Phased payment of connection fees.

The Regulator may require designated undertakings to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non-payment of bills.

The Regulator may authorise specified measures, which are proportionate, non-discriminatory and published, to cover non-payment of telephone bills issued by undertakings. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to a subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures are to ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to subscribers. The Regulator may allow a period of limited service prior to complete disconnection, during which only calls that do not incur charges to the subscriber (e.g. “112” calls) are permitted.

(f) Tariff advice.

i.e. the facility whereby subscribers may request the undertaking to provide information regarding alternative lower-cost tariffs, if available.

(g) Cost control.

i.e. the facility whereby undertakings offer other means, if determined by the Regulator to be appropriate, to control the cost of publicly available telephone services, including free of charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B: Facilities referred to in Regulation 24:

(a) Tone dialling or DTMF (dual-tone multi-frequency operation)

i.e. the public communications network or publicly available telephone service supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) Calling-line identification

i.e. the calling party’s number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular the Privacy and Electronic Communications Regulations.

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

SCHEDULE 2

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN ACCORDANCE WITH ARTICLES 12 AND 13 OF THE UNIVERSAL SERVICE DIRECTIVE (TRANPOSED BY REGULATIONS 11 AND 12 OF THE UNIVERSAL SERVICE REGULATIONS)

Regulations 11(4) and 12(3)

Part A: Calculation of net cost:

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of a network and service throughout a specified geographical area including, where required, averaged prices in that geographical area for the provision of that service or provision of specific tariff options for consumers with low incomes or with special social needs.

National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations. This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion. Due attention is to be given to correctly assessing the costs that any designated undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc.;

- (ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority.

Part B: Recovery of any net costs of universal service obligations:

The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 13(3) of the Universal Service Directive, a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due or administrative payments to the undertakings entitled to receive payments from the fund.

SCHEDULE 3

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH
REGULATION 15

Regulation 15(2)

1. The name and address of the head office of the undertaking.
2. Description of publicly available services offered, including—
 - (i) the scope of the services offered,
 - (ii) standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment,
 - (iii) compensation and refund policies, including specific details of any compensation or refund schemes offered,
 - (iv) types of maintenance services offered, and
 - (v) standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.
3. Dispute settlement mechanisms including those developed by the undertaking.
4. Information about rights as regards universal service including, where appropriate, the facilities and services mentioned in Schedule 1.



GIVEN under my Official Seal,
1 July 2011.

PAT RABBITTE,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

The purpose of these Regulations is to give effect to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), and the amendments to that Directive as introduced by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009.

As well as transposing the amendments made by Directive 2009/136/EC, these Regulations consolidate the provisions of the existing Statutory Instruments transposing the Universal Service Directive, namely, the "European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003)" and the "European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 (S.I. No. 374 of 2007)", which have been revoked by these Regulations.

The aim of these Regulations is, inter alia, to ensure the provision of specified electronic communications services and the affordability of those services.

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