



STATUTORY INSTRUMENTS.

**S.I. No. 271 of 2007**

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

(Prn. A7/1101)

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

I, NOEL DEMPSEY, 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 2002/21/EC of the European Parliament and of the Council of 7 March 2002,<sup>1</sup> hereby make the following Regulations:

*Citation and commencement*

1. (1) These Regulations may be cited as the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007.

(2) These Regulations come into operation on 13 June 2007.

*“Principal Regulations” defined*

2. In these Regulations, “Principal Regulations” means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003).

*Amendment of Regulation 2 of the Principal Regulations (Interpretation)*

3. Regulation 2(1) of the Principal Regulations is amended by inserting the following definition after the definition of “Act of 2002”:

“‘appeal’ means an appeal lodged under Regulation 4;”.

*Substitution of Part 2 of the Principal Regulations (Appeals)*

4. The Principal Regulations are amended by revoking Part 2 and substituting the following Part:

**“PART 2**

**APPEALS AGAINST DECISIONS OF REGULATOR**

*Application of this Part*

3. (1) Except as provided by paragraph (2), this Part applies to a decision made or given by the Regulator under—

(a) these Regulations, or

<sup>1</sup>O.J. L 108, 24.4.2002, p. 33.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 15th June, 2007.*

- (b) the Authorisation Regulations, or
  - (c) the Access Regulations, or
  - (d) the Universal Service Regulations, or
  - (e) the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003).
- (2) This Regulation does not apply to a notification or notice given under any of the following provisions:
- (a) Regulation 35(1) of these Regulations;
  - (b) Regulation 18(1) of the Access Regulations;
  - (c) Regulation 16(2) of the Authorisation Regulations;
  - (d) Regulation 32(2) of the Universal Service Regulations;
  - (e) Regulation 20(1) of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003);
  - (f) section 44 of the Act of 2002.

*Right of appeal against decision of Regulator*

4. (1) A user who, or undertaking that, is affected by a decision may appeal to the High Court against the decision.

(2) An appeal must be lodged within 28 days after the user or undertaking has been notified of the decision and in such manner as is prescribed by the Rules of the High Court and Supreme Court.

*Regulator to be respondent to appeal*

5. (1) The High Court may hear an appeal only if it is satisfied that a copy of the appeal has been served on the Regulator.

(2) On being served with a copy of the appeal, the Regulator becomes the respondent to the appeal.

*Powers of High Court with respect to appeals*

6. (1) The High Court shall hear and determine an appeal and may make such orders as it considers appropriate.

(2) Without limiting paragraph (1), the orders that may be made by the High Court on the determination of an appeal include—

- (a) an order affirming or setting aside the whole or any part of the decision of the Regulator, and

- (b) an order remitting the case to the Regulator to be redetermined, either with or without the hearing of further evidence, in accordance with the directions of the Court.

*Effect of appeal on operation of Regulator's decision*

7. (1) Subject to this section, lodging an appeal with the High Court from a decision of the Regulator does not of itself affect the operation of the decision or prevent action from being taken to implement the decision.

(2) If an appeal is lodged with the High Court from a decision of the Regulator, that Court or a Judge of that Court may make such order staying or otherwise affecting the operation or implementation of the decision of the Regulator, or a part of that decision, as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) If an order is in force under paragraph (2) (including an order that has previously been varied on one or more occasions under this paragraph), the High Court, or a Judge of that Court, may make a further order varying or revoking the order.

(4) An order in force under paragraph (2) (including an order that has previously been varied on one or more occasions under paragraph (3))—

(a) is subject to such conditions as are specified in the order, and

(b) has effect until—

- (i) if a period for the operation of the order is specified in the order—the expiry of that period or, if the appeal is determined before the end of that period, the making of the determination, or
- (ii) if no period is so specified—the giving of a decision on the appeal.

*Certain documents to be sent to High Court*

8. (1) When an appeal is lodged in the High Court in accordance with Regulation 4—

- (a) the Regulator shall send to the Court all documents that were before it in connection with the proceeding to which the appeal relates, and
- (b) at the conclusion of the proceeding before the High Court in relation to the appeal, that Court shall arrange for the documents to be returned to the Regulator.

*Transitional arrangement for appeals pending at the commencement of this Part*

9. If an appeal lodged under Part 2 of these Regulations (as in force immediately before the commencement of the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007) has not been disposed of before that commencement, the provisions of that Part (as so in force) continue to apply to and in respect of the appeal.”.

*Amendment of Regulation 17 of the Principal Regulations (Provision of information)*

5. Regulation 17 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (4):

“(4) An undertaking that fails to comply with a requirement made under paragraph (1) commits an offence.

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

(4B) 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 for that requirement to be complied with.

(4C) 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.

(4D) If, after being convicted of an offence under paragraph (4), an undertaking continues to fail to comply with the requirement of the Regulator under paragraph (1), the undertaking commits a further offence on each day or part of a day during which the failure continues.

(4E) An undertaking found guilty of an offence under paragraph (4D) 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 22 of the Principal Regulations (Numbers)*

6. Regulation 22 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (2):

“(2) A person commits an offence if the person assigns to locations, terminals, persons or functions on public communications networks numbers from the national numbering scheme that the Regulator has not specifically allocated to the person in connection with the provision of publicly available electronic communications services.

(2A) An offence under paragraph (2) is triable either summarily or on indictment.

(2B) If tried summarily, an offence under paragraph (2) is one of strict liability, but if the offence is tried on indictment, it is a defence to establish that the person reasonably believed that the network numbers had been specifically allocated to the person by the Regulator.

(2C) A person found guilty of an offence under paragraph (2) is liable on conviction—

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

(2D) If, after being convicted of an offence under paragraph (2), a person continues to do the act to which the offence relates, the person commits a further offence on each day or part of a day during which the act is continued.

(2E) A person found guilty of an offence under paragraph (2D) 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 24 of the Principal Regulations (Accounting separation and financial reports)*

7. (1) Regulation 24 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (3):

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

(4) An offence under paragraph (3) is triable either summarily or on indictment.

(5) If tried summarily, an offence under paragraph (3) is one of strict liability, but if the offence is tried on indictment, it is a defence to establish that—

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

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

(6) An undertaking found guilty of an offence under paragraph (3) 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.

(7) If, after being convicted of an offence under paragraph (3), an undertaking continues to fail to comply with paragraph (1) or (2), the undertaking commits a further offence on each day or part of a day during which the failure continues.

(8) An undertaking found guilty of an offence under paragraph (7) 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 27 of the Principal Regulations (Market analysis procedure)*

8. (1) Regulation 27 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (6):

“(7) An undertaking that fails to comply with an obligation imposed on it under paragraph (4) commits an offence.

(8) An offence under paragraph (7) 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 obligation, or

(b) it was not possible for that obligation 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 undertaking is a body corporate and the offence is tried on indictment, to a fine not exceeding—

(i) €5,000,000; or

(ii) if 10 per cent of the turnover of the undertaking is greater than that amount, an amount equal to that percentage, or

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

(11) If, after being convicted of an offence under paragraph (7), an undertaking continues to fail to comply with an obligation imposed under paragraph (4), 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 31 of the Principal Regulations (Dispute resolution between undertakings)*

9. (1) Regulation 31 of the Principal Regulations is amended by substituting the following paragraphs for paragraph (8):

“(8) An undertaking that—

- (a) fails to co-operate with an investigation under this Regulation, or
- (b) fails to comply with a determination made under this Regulation,

commits an offence.

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

- (a) reasonable steps were taken to co-operate with the relevant investigation, or to comply with the relevant determination, or
- (b) it was not possible to co-operate with that investigation, or to comply with that determination.

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

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

(8D) An undertaking found guilty of an offence under paragraph (8C) is liable for the offence 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.

(8E) An offence under this Regulation is triable summarily.”.

*Substitution of Regulation 33 of the Principal Regulations*

10. The Principal Regulations are amended by substituting the following Regulations for Regulation 33:

*“Prosecution of offences generally”*

33. (1) If—

- (a) the Regulator has made an application under Regulation 35 to the High Court to secure a person’s compliance with an obligation imposed by or under these Regulations, and
- (b) a provision of these Regulations makes it an offence to fail to comply with the obligation, 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.

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

*Offences by bodies corporate*

33A. (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.”.

*Amendment of Regulation 34 of the Principal Regulations (Directions)*

11. (1) Regulation 34 of the Principal Regulations is amended as follows:

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

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

“(2) An undertaking that fails to comply with a direction specified to it under paragraph (1) commits an offence.

(3) 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.

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

L.S.

GIVEN under my Official Seal,  
12 June 2007

NOEL DEMPSEY,  
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) (Framework) Regulations 2003 (S.I. No. 307 of 2003) by—

- (1) moving the determination of appeals against ComReg decisions from Electronic Communications Appeal Panels to the High Court,
- (2) creating new summary offences,
- (3) increasing the penalties for new and existing summary offences, (4) creating certain indictable and continuous offences and providing for the penalties that may be imposed on conviction of these offences.

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