



STATUTORY INSTRUMENTS.

S.I. No. 335 of 2011

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (AUTHORISATION) REGULATIONS
2011

(Prn. A11/1164)

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (AUTHORISATION) REGULATIONS
2011

CONTENTS

Regulation

1. Citation
2. Interpretation
3. Confidentiality of information
4. Authorisation of electronic communications networks and services
5. Declarations to facilitate the exercise of rights to install facilities and rights of interconnection
6. Register of authorised undertakings
7. Rights of undertakings under general authorisation
8. Conditions attached to a general authorisation
9. Rights of use for radio frequencies
10. Conditions attached to rights of use for radio frequencies
11. Procedure for limiting the number of rights of use to be granted for radio frequencies
12. Harmonised assignment of radio frequencies
13. Rights of use for numbers
14. Conditions attached to rights of use for numbers
15. Amendment of rights and obligations
16. Enforcement — compliance with obligations
17. Suspension or withdrawal of authorisation, rights of use for radio frequencies or rights of use for numbers
18. Information required under the general authorisation, for rights of use and for specific obligations
19. Fees for rights of use and rights to install facilities
20. Publication of information
21. Directions
22. Service of determinations, directions and notifications

23. Prosecution of offences
24. Offences by bodies corporate
25. Penalties
26. Publication of specification of conditions
27. Transitional arrangements
28. Revocations

Schedule

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (AUTHORISATION) 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 2002/20/EC of the European Parliament and of the Council of 7 March 2002¹ as amended by Directive 2009/140/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) (Authorisation) 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 1926” means Wireless Telegraphy Act 1926 (No. 45 of 1926);

“Act of 1983” means Postal and Telecommunications Services Act 1983 (No. 24 of 1983);

“Act of 2000” means Planning and Development Act 2000 (No. 30 of 2000);

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

“authorised undertaking” means an undertaking deemed to be authorised under Regulation 4;

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

“general authorisation” means an authorisation for an undertaking to provide an electronic communications network or service under and in accordance with Regulation 4;

¹OJ L 108, 24.4.2002, p. 21

²OJ L 337, 18.12.2009, p. 37

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

“licence”, unless it is otherwise indicated, means a licence granted under section 5 of the Act of 1926 to keep and have possession of apparatus for wireless telegraphy for the provision of an electronic communications network or service and which grants a right of use for radio frequencies;

“NRA” means National Roads Authority;

“Regulations of 2003” means European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 (S.I. No. 306 of 2003);

“road authority” has the meaning assigned to it by section 2 (as amended by section 11 of the Roads Act 2007 (No. 34 of 2007)) of the Roads Act 1993 (No. 14 of 1993);

(3) A word or expression that is used in these Regulations and that is also used in the Authorisation 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 to the Regulations of 2003 is to be construed as a reference to these Regulations.

Confidentiality of information

3. For the purpose of these Regulations the Regulator shall, subject to the Freedom of Information Acts 1997 and 2003, accept as confidential any information provided to the Regulator which is expressed to be confidential, except where the Regulator has good reason to consider otherwise.

Authorisation of electronic communications networks and services

4. (1) Subject to paragraph (7), any undertaking that intends to provide an electronic communications network or an electronic communications service shall, before doing so, notify the Regulator of its intention to provide such a network or service.

(2) An undertaking providing cross border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.

(3) A notification under paragraph (1) shall be in such form as the Regulator may, from time to time, determine and shall contain the following information—

- (a) the name of the undertaking concerned including, in the case of a body corporate, the company registration number,
- (b) the names, addresses and contact numbers of relevant contact persons,

- (c) the business address of the undertaking concerned and in the case of a body corporate, where that address differs from the address of its registered office, the address of its registered office,
- (d) a short description of the network or service which is the subject of the notification, including a statement as to whether the relevant network or service is to be made publicly available, and
- (e) the estimated date of commencement of the relevant activity.

(4) Upon receipt by the Regulator of a notification under paragraph (1), the undertaking concerned is deemed to be authorised to provide an electronic communications network or electronic communications service or, as appropriate, both, subject to such conditions as may be specified by the Regulator under Regulation 8.

(5) An undertaking shall notify the Regulator of any changes to the information supplied under paragraph (1) in relation to the matters referred to in paragraph (3)(a) to (c) within 14 days of such change and in relation to the matters referred to in paragraph (3)(d) and (e) before the commencement of the implementation of the change related to the relevant activity.

(6) An undertaking that fails to comply with the requirements of paragraph (1) or (5) commits an offence.

(7) The Regulator may make a determination specifying an electronic communications network or electronic communications service of a particular class or description as being a network or service in relation to which an undertaking is not subject to the requirements of paragraph (1).

(8) Where the Regulator determines under paragraph (7) that an undertaking is not required to notify under paragraph (1), that undertaking is deemed to be authorised under this Regulation.

(9) A reference in any enactment to a person licensed under section 111 of the Act of 1983 is to be construed as a reference to an undertaking deemed to be authorised under this Regulation.

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection

5. (1) The Regulator shall, within one week of the receipt by it of a request from any authorised undertaking, issue to that undertaking, in such form as the Regulator may from time to time determine, a standardised declaration—

- (a) confirming, where applicable, that the undertaking has submitted a notification under Regulation 4(1), and
- (b) detailing under what circumstances any undertaking has the right to—
 - (i) apply for a consent under section 53 of the Act of 2002 or a licence under section 254(1) of the Act of 2000 for the establishment

of overground electronic communications infrastructure and any associated physical infrastructure,

- (ii) negotiate interconnection, and
- (iii) obtain access or interconnection,

in order to facilitate the exercise of those rights.

(2) Where it considers it appropriate to do so, the Regulator may issue such declaration as an automatic reply upon receipt of a notification under Regulation 4(1).

Register of authorised undertakings

6. (1) The Regulator shall establish and maintain a register of undertakings that have notified the Regulator of an intention to provide an electronic communications network or service under Regulation 4(1) and such information contained in any such notification under that paragraph as the Regulator considers appropriate, other than information which the Regulator reasonably considers confidential, shall be entered in the register established and maintained under this paragraph.

(2) The Regulator may, as occasion requires, amend or delete an entry in the register.

(3) Members of the public may inspect the register free of charge at all reasonable times and may take copies of, or extracts from, entries in the register.

(4) In any proceedings a certificate bearing the seal of the Regulator, stating that the register shows that on the date or during the period specified in the certificate the name of the undertaking identified by the certificate was not entered in the register, is admissible as evidence of the fact that an undertaking identified by the certificate did not notify the Regulator in accordance with Regulation 4(1) of its intention to provide a network or service before that date or during that period.

(5) A document purporting to be a certificate under paragraph (4) is deemed to be such a certificate unless the contrary is shown.

Rights of undertakings under general authorisation

7. (1) An authorised undertaking may—

- (a) subject to Regulation 8(3), provide the electronic communications networks or services as described in a notification under Regulation 4(1) or 4(5) or where a notification is not required as described in a determination referred to in Regulation 4(7),
- (b) apply for a consent under section 53 of the Act of 2002, and

- (c) apply for a licence under section 254(1) of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure.
- (2) Where an authorised undertaking is providing an electronic communications network or service to the public, it has the right—
 - (a) under the conditions of and in accordance with the Access Regulations and the Access Directive, to negotiate interconnection with and, where applicable, obtain access to or interconnection from another undertaking deemed to be authorised in the State or in another Member State to provide a publicly available electronic communications network or service, and
 - (b) to be given an opportunity by the Regulator to be designated under Regulation 7 of the Universal Service Regulations to carry out obligations referred to in that Regulation.

Conditions attached to a general authorisation

8. (1) The Regulator shall, as soon as practicable after the commencement of these Regulations, specify conditions to be attached to a general authorisation only as are listed in Part A of the Schedule. The Regulator may specify that certain conditions do not apply to undertakings of such class or type as may be specified by the Regulator.

(2) Any attachment of conditions to the general authorisation or non-application of conditions to undertakings of such class or type as may be specified by the Regulator under paragraph (1) shall be non-discriminatory, proportionate and transparent.

(3) An authorised undertaking shall comply with the conditions attaching to the general authorisation applicable to it.

(4) The Regulator shall not attach as a condition to the general authorisation any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of other law.

(5) The criteria and procedures for imposing any specific obligations referred to in paragraph (4) shall be referred to by the Regulator in the specification of conditions referred to in paragraph (1).

(6) The Regulator shall ensure that where a requirement is specified as a condition of a licence such a requirement shall not be specified as a condition of a general authorisation in respect of the networks or services concerned.

(7) An undertaking that fails to comply with any conditions attached to its general authorisation 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 condition or conditions, or
- (b) it was not possible to comply with the relevant condition or conditions.

Rights of use for radio frequencies

9. (1) Subject to paragraph (2), rights of use for radio frequencies for the provision of electronic communications networks or services shall be facilitated under a general authorisation under these Regulations.

(2) The Regulator may grant individual rights of use for radio frequencies by way of a licence where it considers that one or more of the following criteria are applicable—

- (a) it is necessary to avoid harmful interference,
- (b) it is necessary to ensure technical quality of service,
- (c) it is necessary to safeguard the efficient use of spectrum, or
- (d) it is necessary to fulfil other objectives of general interest as defined by or on behalf of the Government or a Minister of the Government in conformity with European Union law.

(3) Decisions to grant individual rights of use referred to in paragraph (2) to any undertaking shall be subject to—

- (a) Regulations 10, 11 and 18(1)(c),
 - (b) any applicable provisions of the Act of 1926 or any relevant regulations made under that Act, and
 - (c) any other rules ensuring the efficient use of those resources in accordance with the Framework Directive and the Framework Regulations.
- (4) (a) The Regulator shall, having regard to Regulation 17 of the Framework Regulations, establish open, objective, transparent, non-discriminatory and proportionate procedures for the granting of rights of use for radio frequencies and shall cause any such procedures to be made publicly available. Such procedures shall be without prejudice to specific criteria and procedures for the granting of rights of use for radio frequencies to the providers of radio or television broadcast content services with a view to pursuing general interest objectives as defined by or on behalf of the Government or a Minister of the Government in accordance with European Union law.
- (b) The Regulator may determine that the procedures referred to in subparagraph (a) will not apply in cases where the granting of rights of

use for radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by or on behalf of the Government or a Minister of the Government in conformity with European Union law.

(5) When granting rights of use for radio frequencies, the Regulator shall, having regard to Regulations 17 and 19 of the Framework Regulations, specify whether such rights may be transferred by the holder of the rights and under what conditions such a transfer may take place.

(6) Rights of use for radio frequencies shall be in force for such period as the Regulator considers appropriate having regard to the network or service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

(7) (a) Where individual rights of use for radio frequencies are granted for a period of 10 years or more and such rights may not be transferred or leased between undertakings in accordance with Regulation 19 of the Framework Regulations, the Regulator shall ensure that the criteria set out in paragraph (2) apply for the duration of the rights of use, in particular upon a justified request from the holder of the rights.

(b) Where the Regulator determines that the criteria referred to in paragraph (2) are no longer applicable to a right of use for radio frequencies, the Regulator shall, after a reasonable period and having notified the holder of the individual rights of use, change the individual rights of use into a general authorisation or shall ensure that the individual rights of use are made transferable or leasable between undertakings in accordance with Regulation 19 of the Framework Regulations.

(8) The Regulator shall, subject to Regulation 11(4), make any decision on the grant of rights of use for radio frequencies as soon as possible after receipt by it of the complete application and in the case of radio frequencies that have been allocated to be used by electronic communications services within the national frequency plan within 6 weeks after such receipt. That time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

(9) The Regulator shall communicate a decision referred to in paragraph (8) to an applicant for a right of use referred to in that paragraph as soon as possible after the decision is made and, subject to any restrictions which the Regulator considers appropriate in order to protect the confidentiality of any information which the Regulator considers confidential, make public such a decision as soon as possible after informing the applicant.

(10) The Regulator shall not limit the number of rights of use for radio frequencies to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Regulation 11.

(11) The Regulator shall ensure that radio frequencies are efficiently and effectively used having regard to section 12(2)(a) of the Act of 2002 and Regulations 16(1) and 17(1) of the Framework Regulations. The Regulator shall

ensure that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies. For this purpose the Regulator may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

(12) For the purpose of this Regulation a general authorisation for the use of radio frequencies shall be facilitated by way of an Order made by the Regulator under section 3(6) of the Act of 1926 declaring that a particular class or description of apparatus for wireless telegraphy is one to which the licence requirements of section 3 of the Act of 1926 do not apply.

Conditions attached to rights of use for radio frequencies

10. (1) Notwithstanding section 5 of the Act of 1926 but subject to any regulations made under section 6 of that Act, where the Regulator attaches conditions to rights of use for radio frequencies, it may only attach such conditions as are listed in Part B of the Schedule. The Regulator may specify that certain conditions do not apply to undertakings of such class or type as may be determined by the Regulator from time to time.

(2) Any—

(a) attachment of conditions under paragraph (1), or

(b) non application under paragraph (1) of conditions to undertakings of a class or type as may be determined by the Regulator,

to rights of use for radio frequencies shall be non discriminatory, proportionate and transparent and shall be in accordance with Regulation 17 of the Framework Regulations.

(3) The Regulator shall ensure that where a requirement is specified as a condition of a right of use for radio frequencies such a requirement shall not be specified as a condition of the general authorisation in respect of the right of use concerned.

Procedure for limiting the number of rights of use to be granted for radio frequencies

11. (1) Where the Regulator considers that the number of rights of use to be granted for radio frequencies should be limited or that the duration of existing rights of use for radio frequencies should be extended other than in accordance with the terms specified in the rights of use it shall, without prejudice to sections 13 and 37 of the Act of 2002,—

(a) give due weight to the need to maximise benefits for users and to facilitate the development of competition, and

(b) give all interested parties, including users and consumers, the opportunity to express their views in accordance with Regulation 12 of the Framework Regulations.

(2) The Regulator may decide, having taken into account the matters referred to in paragraph (1)(a) and (b), that the number of rights of use for radio frequencies referred to in that paragraph ought to be limited and, where the Regulator so decides, it shall grant such rights of use on the basis of selection criteria which are objective, transparent, non-discriminatory and proportionate and which give due weight to the achievement of the objectives set out in section 12 of the Act of 2002 and Regulations 16 and 17 of the Framework Regulations.

(3) The Regulator shall cause to be published, in such form as the Regulator may determine, any decision referred to in paragraph (2) to limit the granting of rights of use for radio frequencies or to extend the duration of existing rights of use and shall include the reasons for the decision.

(4) Where the Regulator decides to use a competitive or comparative selection procedure for the purpose of granting rights of use for radio frequencies, the Regulator may extend the maximum period of 6 weeks referred to in Regulation 9(8) for as long as is necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than 8 months.

(5) The time limits referred to in paragraph (4) shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite co-ordination.

(6) The Regulator shall review any limitation referred to in paragraph (2) at intervals which it considers reasonable or at the reasonable request of any undertaking affected.

(7) Without prejudice to sections 13 and 37 of the Act of 2002, where the Regulator decides that further rights of use ought to be offered it shall cause its decision to be published and invite applications for such rights of use.

(8) This Regulation is without prejudice to the transfer of rights of use for radio frequencies in accordance with Regulation 19 of the Framework Regulations.

Harmonised assignment of radio frequencies

12. When granting a right of use for radio frequencies in relation to which—

- (a) the harmonised usage of the radio frequencies involved in accordance with any international agreements or European Union rules,
- (b) any relevant access conditions and procedures under any international agreements or European Union rules, or
- (c) any selection procedure in accordance with international agreements or European Union rules,

apply, the Regulator shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the grant of the right of use concerned provided that all conditions which may be specified by the Regulator

to be complied with by the holder of the right of use in the State have been satisfied.

Rights of use for numbers

13. (1) The Regulator may, on receipt of an application in such form as it may from time to time determine, grant a right of use for any class or description of number to any undertaking as the Regulator considers appropriate subject to Regulations 14, 18(1)(c) and to Regulation 20 of the Framework Regulations.

(2) The Regulator shall establish open, objective, transparent, non-discriminatory and proportionate procedures for the grant of rights of use for numbers and shall cause any such procedures to be made publicly available.

(3) The Regulator shall make any decision on the grant of a right to use a class or description of number as soon as possible after receipt by it of a complete application and in the case of a number that has been allocated for a specific purpose within the national numbering scheme, within 3 weeks after such receipt.

(4) The Regulator shall communicate a decision referred to in paragraph (3) to an applicant for a right of use referred to in that paragraph as soon as is reasonably practicable after the decision is made and, subject to any restrictions which the Regulator considers appropriate in order to protect the confidentiality of any information which the Regulator considers confidential, make public such a decision as soon as is reasonably practicable after informing the applicant.

(5) Where the Regulator decides, after consultation in accordance with Regulation 12 of the Framework Regulations, that rights of use for numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, the Regulator may extend the maximum period of three weeks referred to in paragraph (3) by up to a further 3 weeks.

(6) When granting a right of use in accordance with paragraph (1), the Regulator shall specify whether such right may be transferred by the holder and under what conditions such a transfer may take place.

Conditions attached to rights of use for numbers

14. (1) The Regulator shall, as soon as practicable after the commencement of these Regulations, specify conditions to be attached to a right of use for numbers only as are listed in Part C of the Schedule. The Regulator may decide that certain conditions do not apply to undertakings of such class or type as may be determined by the Regulator.

(2) Any attachment or non-application of conditions under paragraph (1) to a right of use for numbers shall be non-discriminatory, proportionate and transparent.

(3) The Regulator shall ensure that where a requirement is specified as a condition of a right of use for numbers such a requirement shall not be specified as a condition of the general authorisation in respect of the right of use concerned.

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

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

Amendment of rights and obligations

15. (1) The Regulator may amend the rights, conditions and procedures concerning the general authorisation, rights of use for radio frequencies and rights of use for numbers provided that any such amendment may only be made in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies.

(2) The NRA or a road authority may amend the conditions of a consent under section 53 of the Act of 2002 provided that such amendments may only be made in objectively justified cases and in a proportionate manner.

(3) A planning authority (within the meaning of the Act of 2000) may amend the conditions of a licence under section 254 of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure provided that such amendment may only be made in objectively justified cases and in a proportionate manner.

(4) Except where the proposed amendments are minor in nature and have been agreed with the holder of a general authorisation, a right of use for radio frequencies, a right of use for numbers, a consent referred to in paragraph (2) or a licence referred to in paragraph (3), before making any amendment under this Regulation, the Regulator, the NRA, a road authority or a planning authority, as the case may be, shall—

- (a) give notice, in such manner as it considers appropriate, of its intention to make the amendment and invite interested parties, including users and consumers, to make representations on the proposed amendment within such period as may be specified in the notice but not being, except in exceptional circumstances, less than 28 days from the date of the notice, and
- (b) have regard to any representations made to it under subparagraph (a).

Enforcement — compliance with obligations

16. (1) The Regulator shall monitor and supervise compliance with the conditions of the general authorisation, of rights of use for radio frequencies, of rights of use for numbers and with the specific obligations, in accordance with Regulation 18.

(2) The Regulator may require an undertaking covered by the general authorisation or enjoying rights of use for radio frequencies or rights of use for numbers to provide the Regulator with all information that the Regulator considers necessary to verify compliance by the undertaking with the conditions of the general authorisation, of the rights of use for radio frequencies, of the rights of use for numbers or with the specific obligations, in accordance with Regulation 18.

(3) Where the Regulator finds that an undertaking has not complied with—

- (a) one or more of its obligations under Regulation 4,
- (b) one or more of the conditions attached to its general authorisation,
- (c) one or more of the conditions attached to its rights of use for radio frequencies,
- (d) one or more of the conditions attached to its rights of use for numbers,
- (e) a measure imposed under Regulation 9(11),
- (f) one or more of the specific obligations,
- (g) an information requirement under Regulation 18(1), or
- (h) a direction under Regulation 21,

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.

(4) 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.

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

(6) Where at the end of the period specified by the Regulator under paragraph (3), the Regulator is of the opinion that the undertaking concerned has not complied with—

- (a) one or more of its obligations under Regulation 4,
- (b) one or more of the conditions attached to its general authorisation,
- (c) one or more of the conditions attached to its rights of use for radio frequencies,
- (d) one or more of the conditions attached to its rights of use for numbers,

- (e) a measure imposed under Regulation 9(11),
- (f) one or more of the specific obligations,
- (g) an information requirement under Regulation 18(1), or
- (h) a direction under Regulation 21,

the Regulator may, whether or not the non-compliance is continuing, subject to paragraph (18), apply to the High Court for such order as the Regulator considers appropriate including—

- (i) a declaration of non-compliance,
- (ii) an order directing compliance with the obligation, condition, measure, requirement or direction,
- (iii) an order directing the remedy of any non-compliance with the obligation, condition, measure, requirement or direction, or
- (iv) an order as provided for in paragraph (10).

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

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation, condition, measure, requirement or direction,
- (c) an order directing the remedy of any non-compliance with the obligation, condition, measure, requirement or direction, or
- (d) an order as provided for in paragraph (10),

or refuse the application.

An order of the High Court compelling compliance may stipulate that the obligation, condition, measure, requirement 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.

(8) The High Court when dealing with an application under paragraph (6) may make such interim or interlocutory order as it considers appropriate.

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

- (10) (a) An application for an order under paragraph (6) or (16) 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, condition, measure, requirement 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, condition, measure, requirement 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 amount 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 non-compliance.

(11) An application for an order under paragraph (6) or (16) may be for or include an application for an order to cease or delay provision of a service or bundle of services which if continued would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Regulation 27 of the Framework Regulations.

(12) Where the Regulator has evidence of a breach by an undertaking of any of the conditions of a general authorisation, of rights of use for radio frequencies, of rights of use for numbers or of the specific obligations that represents an immediate and serious threat to public safety, public security, public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum, the Regulator may take urgent interim measures to remedy the situation. Such measures may include requiring immediate compliance with the condition or obligation or requiring that the use of such apparatus or part of it, as may be specified, cease with immediate effect or on or before such date and time as may be so specified.

(13) An undertaking to which a requirement under paragraph (12) has been issued shall comply with the requirement unless and until such requirement has been withdrawn by the Regulator and shall take such measures as may be specified by the Regulator in the requirement to remedy the breach.

(14) An undertaking may make representations to the Regulator concerning a requirement made of the undertaking under paragraph (12) and the Regulator having considered the representations may confirm, amend or withdraw the requirement.

(15) Where the Regulator considers it appropriate to do so it may confirm the interim measures referred to in paragraph (12), which shall be valid for a maximum of 3 months but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to 3 months.

(16) Where an undertaking fails to comply with a requirement under paragraph (12), the Regulator may, subject to paragraph (18), apply to the High Court for an order compelling compliance.

(17) This Regulation applies in respect of a licence notwithstanding anything to the contrary in—

(a) the Act of 1926,

(b) regulations made under section 6 of that Act relating to that licence, or

(c) in the licence itself.

(18) 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.

Suspension or withdrawal of authorisation, rights of use for radio frequencies or rights of use for numbers

17. (1) Where the Regulator considers that there is or has been serious or repeated breaches by an undertaking of the conditions attached to its general authorisation, of its rights of use for radio frequencies, of its rights of use for numbers or of the specific obligations, the Regulator may decide, having considered any representations made by the undertaking within the period referred to in paragraph (2), that the undertaking is no longer authorised under Regulation 4 and may suspend or withdraw any rights of use for radio frequencies or rights of use for numbers granted to the undertaking.

(2) The Regulator shall notify an undertaking where the Regulator proposes to take action under paragraph (1) against it and shall allow the undertaking 28 days to make representations to the Regulator before taking the action.

(3) Where the Regulator decides, in accordance with paragraph (1), that an undertaking is no longer to be authorised under Regulation 4 or decides to suspend or withdraw a right of use for radio frequencies or a right of use for numbers, the Regulator may also apply to the High Court for an order to pay

to the Regulator such amount by way of financial penalty, as the Regulator proposes as appropriate in light of the serious or repeated breach, and an application for such order may include amounts by way of financial penalties in respect of periods of non-compliance where there has since been compliance.

(4) In deciding on an application under paragraph (3), the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator. In deciding the amount payable the High Court shall consider the circumstances of the non-compliance including—

- (a) its duration,
- (b) the effect on consumers, users and other operators,
- (c) the submissions of the Regulator on the appropriate amount,
- (d) any representations made by the undertaking under paragraph (2), and
- (e) any excuse or explanation for the non-compliance.

(5) Any financial penalty ordered by the High Court to be paid by an undertaking under this Regulation shall be paid to and retained by the Regulator as income.

Information required under the general authorisation, for rights of use and for specific obligations

18. (1) The Regulator may require an undertaking to provide information in respect of the general authorisation, of a right of use for radio frequencies, of a right of use for numbers or of the specific obligations but only where such requirement is proportionate and objectively justified for—

- (a) systematic or case-by-case verification of compliance with, as appropriate, conditions 1 and 2 of Part A, conditions 2 and 6 of Part B, and conditions 2 and 7 of Part C of the Schedule and of compliance with any of the specific obligations,
- (b) case-by-case verification of compliance with conditions as set out in the Schedule where a complaint has been received by the Regulator, where the Regulator has other reasons to believe that a condition is not complied with or in the case of an investigation by the Regulator on its own initiative,
- (c) procedures for and assessment of requests for granting rights of use,
- (d) publication of comparative overviews of quality and price of services for the benefit of consumers,
- (e) clearly defined statistical purposes,

- (f) market analysis for the purposes of the Access Regulations or the Universal Service Regulations,
- (g) safeguarding the efficient use and ensuring the effective management of radio frequencies, and
- (h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors.

(2) The information referred to in subparagraphs (a), (b), (d), (e), (f), (g) and (h) of paragraph (1) may not be required prior to or as a condition for market access.

(3) Where the Regulator requires an undertaking to provide any such information as is referred to in paragraph (1), the Regulator shall inform the undertaking concerned of the specific purpose for which this information is to be used.

Fees for rights of use and rights to install facilities

19. (1) The Regulator may, subject to sections 13 and 37 of the Act of 2002, impose fees for rights of use for radio frequencies or rights of use for numbers which reflect the need to ensure the optimal use of the radio frequency spectrum and the national numbering scheme.

(2) The Regulator shall ensure that any such fees referred to in paragraph (1) shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives of the Regulator as set out in section 12 of the Act of 2002 and Regulation 16 of the Framework Regulations.

(3) A charge imposed by the NRA or a road authority for a consent under section 53 of the Act of 2002—

- (a) may reflect the need to ensure the optimal use of the relevant road, but
- (b) shall be objectively justified, transparent, non-discriminatory and proportionate in relation to its intended purpose and shall take into account the objectives set out in Article 8 of the Framework Directive.

Publication of information

20. (1) The Regulator shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning the general authorisation, rights of use for radio frequencies, rights of use for numbers and rights to install facilities is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

(2) The Regulator shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of information regarding procedures and conditions relating to consents under section 53 of the Act of 2002 and

licences under section 254 of the Act of 2000 for the establishment of over-ground electronic communications infrastructure and any associated physical infrastructure in order to facilitate applications for such consents and licences.

Directions

21. The Regulator may, for the purpose of further specifying requirements to be complied with relating to a condition attached to a general authorisation under Regulation 8, a condition attached to a right of use for radio frequencies under Regulation 10 or a condition attached to a right of use for numbers under Regulation 14, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.

Service of determinations, directions and notifications

22. (1) Where the Regulator issues a determination, direction or notification 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.

Prosecution of offences

23. (1) If—

- (a) the Regulator has made an application under Regulation 16 to the High Court to compel an undertaking to comply with an obligation under Regulation 4 or a condition attached to a general authorisation under Regulation 8 or a condition attached to a right of use for numbers under Regulation 14, and
- (b) a provision of these Regulations makes it an offence to fail to comply with the obligation or condition,

the Regulator may not bring proceedings against the undertaking for such an offence or give a notice under section 44 of the Act of 2002 for failing to comply with the condition.

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

Offences by bodies corporate

24. (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

25. (1) An undertaking that commits an offence under these Regulations (other than under Regulation 4(6), 8(7) or 14(4)) is liable on summary conviction to a class A fine.

(2) An undertaking that commits an offence under Regulation 4(6), 8(7) or 14(4) 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.

Publication of specification of conditions

26. (1) The Regulator shall cause to be published in the *Iris Oifigiúil* and on its website, notice of the specification of conditions under Regulation 8, 10 or 14 and of a determination under Regulation 4(3) or 4(7). The notice shall include information on where copies of the specification of conditions or determination can be obtained.

(2) Where the Regulator amends or revokes any such specification of conditions or determinations in accordance with Regulation 15 or any such determination, paragraph (1) applies accordingly.

Transitional arrangements

27. (1) Without prejudice to Regulation 18 of the Framework Regulations, the Regulator shall bring all general authorisations, licences and rights of use for numbers in existence on 31 December 2009 into conformity with Regulations 8, 9, 10, 11, 13, 14 and the Schedule to these Regulations not later than 19 December 2011.

(2) Where the Regulator considers that the application of paragraph (1) would result in a reduction of the rights or an extension of the general authorisation, licence or rights of use for numbers already in existence, the Regulator may, upon request by such undertaking, extend the validity of those authorisations, licences and rights of use until, at the latest, 30 September 2012 provided that the rights of other undertakings under European Union law are not affected by such extension.

(3) Where the Regulator extends the validity of a general authorisation, a licence or a right of use under paragraph (2), it shall notify such extension to the European Commission and the Minister and state the reasons for such extension.

(4) Where the Regulator grants a licence under section 5 of the Act of 1926 to an undertaking, the holder of the licence is only required to comply with such conditions referred to in Part B of the Schedule as are specified by the Regulator to be applicable to such licence.

(5) Paragraph (4) is without prejudice to the continuation in force of any condition, compatible with European Union law, attached to a licence referred

to in that paragraph for the purpose of pursuing general interest objectives relating to content regulation or audio visual policy.

(6) The Regulator shall notify a holder of a licence to which this Regulation applies of the conditions applicable to such licence as soon as practicable after the commencement of these Regulations.

(7) A measure that was in force under the Regulations of 2003 immediately before the commencement of these Regulations shall continue in force as if it was made under these Regulations.

(8) For the purpose of paragraph (7), “measure” means a decision, designation, determination, direction, notice, notification (other than a notification under Regulation 16(2) of the Regulations of 2003), requirement, specification or other act of an equivalent effect made by the Regulator.

(9) A person deemed to be authorised in accordance with Regulation 4 or 22 of the Regulations of 2003 immediately before the commencement of these Regulations shall continue to be authorised in accordance with Regulation 4 of these Regulations.

(10) Notwithstanding the revocation of the Regulations of 2003, notifications by the Regulator on a person under Regulation 16(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

28. (1) Subparagraph (c) of section 30(1) (inserted by Regulation 19 of the Regulations of 2003) of the Act of 2002 is repealed.

(2) The following Regulations are revoked:

(a) the Regulations of 2003; and

(b) the European Communities (Electronic Communications Networks and Services)(Authorisation)(Amendment) Regulations 2007 (S.I. No. 372 of 2007).

SCHEDULE

Regulations 8, 10, 14, 18 and 27

Part A. Conditions which may be attached to a general authorisation

1. Financial contributions to the funding of universal service in conformity with the Universal Service Regulations.
2. Administrative charges in accordance with section 30 of the Act of 2002.
3. Interoperability of services and interconnection of networks in conformity with the Access Regulations.
4. Accessibility by end-users of numbers from the national numbering scheme, numbers from the European Telephone Numbering Space, the Universal International Freephone Numbers and, where technically and economically feasible, from numbering plans of other Member States, and conditions in conformity with the Universal Service Regulations.
5. Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with the Act of 2002 and the Act of 2000 and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.
6. Must carry obligations in conformity with the Universal Service Directive.
7. Personal data and privacy protection specific to the electronic communications sector in conformity with the Privacy and Electronic Communications Regulations.
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations and conditions on accessibility for users with disabilities in accordance with Regulation 6 of those Regulations.
9. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000³ and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EC of 3 October 1989⁴.
10. Information to be provided under a notification in accordance with Regulation 4 and for other purposes as included in Regulation 18.

³OJ L 178, 17.07.2000, p. 1

⁴OJ L 298, 17.10.1989, p. 23

11. Enabling of legal interception by competent national authorities in conformity with the Privacy and Electronic Communications Regulations and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁵.

12. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.

13. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.

14. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with European Union law.

15. Access obligations other than specific obligations applying to undertakings providing electronic communications networks or services, in conformity with the Access Regulations.

16. Maintenance of the integrity of public communications networks in accordance with the Access Regulations and the Universal Service Regulations including conditions to prevent electromagnetic interference between electronic communications networks or services in accordance with Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004⁶.

17. Security of public networks against unauthorised access according to the Privacy and Electronic Communications Regulations.

18. Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999⁷, where Regulation 9(2) applies.

19. Measures designed to ensure compliance with standards and specifications referred to in Regulation 28 of the Framework Regulations.

20. Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of the Framework Directive, disclosure regarding any conditions limiting access to or use of services and applications where such conditions are allowed by Member States in conformity with European Union law, and, where necessary and proportionate, access by the Regulator to such information needed to verify the accuracy of such disclosure.

⁵OJ L 281, 23.11.1995, p. 31

⁶OJ L 390, 31.12.2004, p. 24

⁷OJ L 91, 07.04.1999, p. 10

Part B. Conditions which may be attached to rights of use

1. Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted including, where appropriate, coverage and quality requirements.
2. Effective and efficient use of frequencies in conformity with the Framework Directive and Framework Regulations.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
4. Maximum duration in conformity with Regulation 9, subject to any changes in the national frequency plan.
5. Transfer of rights at the initiative of the rights holder and conditions of such transfer in conformity with the Framework Directive.
6. Usage fees in accordance with Regulation 19.
7. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
8. Obligations under relevant international agreements relating to the use of frequencies.
9. Obligations specific to an experimental use of radio frequencies.

Part C. Conditions which may be attached to rights of use for numbers

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purpose of ensuring consumer protection in accordance with section 12(2)(c)(ii) of the Act of 2002.
2. Effective and efficient use of numbers in conformity with the Framework Regulations.
3. Number portability requirements in conformity with the Universal Service Regulations.
4. Obligation to provide public directory subscriber information for the purposes of Regulations 4 and 19 of the Universal Service Regulations.
5. Maximum duration in conformity with Regulation 13 subject to any changes in the national numbering scheme.
6. Transfer of rights at the initiative of the rights holder and conditions for such transfer in conformity with the Framework Regulations.

7. Usage fees in accordance with Regulation 19.
8. Any commitment which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.



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 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), and the amendments to that Directive as introduced by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009.

As well as transposing the amendments made by Directive 2009/140/EC, these Regulations consolidate the provisions of the existing Statutory Instruments transposing the Authorisation Directive, namely, the “European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003)” and the “European Communities (Electronic Communications Networks and Services) (Authorisation) (Amendment) Regulations 2007 (S.I. No. 372 of 2007)”, which have been revoked by these Regulations.

The aim of these Regulations is to facilitate the freedom to provide electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834 or 1890 213434; Fax: 094 - 9378964 or 01 - 6476843)
or through any bookseller.

€6.60

