



STATUTORY INSTRUMENTS.

S.I. No. 338 of 2010

COMMUNICATIONS REGULATION (LICENSING OF PREMIUM
RATE SERVICES) REGULATIONS 2010

(Prn. A10/0994)

COMMUNICATIONS REGULATION (LICENSING OF PREMIUM RATE SERVICES) REGULATIONS 2010

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 7 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and having consulted with the Broadcasting Authority of Ireland as required by section 7(4) of the said Act hereby makes the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Communications Regulation (Licensing of Premium Rate Services) Regulations 2010.

(2) These Regulations shall come into operation on 12 July 2010.

Interpretation

2. (1) In these Regulations except where the context otherwise requires:

“Act of 2010” means the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010;

“aggregator provider” means a person who does any or all of the following for gain:

- (a) packages together the contents of a premium rate service for the purpose of facilitating its provision,
- (b) makes available a facility as part of a premium rate service, and/or
- (c) transfers a premium rate service from a content provider to one or more electronic communications networks;

“authorised service” means those categories of specified premium rate services the provision of which requires a certificate;

“call” means any communication (whether voice, data, text or otherwise) which passes through an electronic communications network, whether initiated by an end user or initiated by or facilitated by a premium rate service provider, and a “caller” shall be construed accordingly;

“certificate” means a certificate issued by the Commission pursuant to Regulation 5 which permits a premium rate service provider to provide an authorisation service;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13th July, 2010.

“chatline service” means a premium rate service which consists of, or includes, either:

- (a) the enabling of more than two persons to simultaneously conduct a telephone conversation with one another without either:
 - (i) each of them having agreed with the other to do so; or
 - (ii) each of them having agreed in advance the respective identities of the other intended participants or the telephone numbers on which they may be called; or
- (b) the enabling of two or more end users to exchange separate recorded messages while connected to the service;

“children’s service” means a premium rate service which either wholly or in part, is aimed at or would reasonably be expected to be attractive to persons under 18 years of age;

“Code” means, subject to section 15(7) of the Act of 2010, the Code of Practice for Premium Rate Service Providers as published by the Commission from time to time pursuant to section 15 of the Act of 2010;

“Commission” means the Commission for Communications Regulation;

“content provider” means a person who does any or all of the following for gain:

- (a) provides the contents of a premium rate service, and/or
- (b) exercises editorial control over the contents of a premium rate service;

“electronic communications network” has the meaning assigned to it by the Principal Act;

“electronic communications services” has the meaning assigned to it by the Principal Act;

“end user” has the meaning assigned to it by section 13(5) by the Act of 2010;

“end user network operator” means a person who does any or all of the following for gain:

- (a) provides an end user with the electronic communications service over which a premium rate service is provided, and/or
- (b) provides the electronic communications network over which a premium rate service is transmitted;

“facility” has the meaning assigned to it by the Act of 2010;

“international call” means a call that terminates on an electronic communications network outside Ireland;

“internet dialler software” means software that is activated by the end user and which is configured to replace the dial up number used by the end user’s computer to connect it to the internet with a different dial-up telephone number;

“levy” means the levy imposed by, and payable to, the Commission under a Levy Order pursuant to section 30 of the Principal Act;

“licence” means a premium rate service licence and licensed shall be construed accordingly;

“on-demand audiovisual media service” has the meaning assigned to it by Regulation 2 of the European Communities (Audiovisual Media Services) Regulations, 2010 (No. 419 of 2010);

“premium rate number” means a number that is identified by the distinctive 15XX access code as provided for in the National Numbering Conventions (currently v6.0 ComReg document 08/02), as amended by the Commission from time to time;

“premium rate service” has the meaning assigned to it by the Act of 2010;

“premium rate service licence ” has the meaning assigned to it by the Act of 2010;

“premium rate service provider” means; either one or more of the following:

- (a) aggregator provider,
- (b) content provider,
- (c) end user network operator or
- (d) terminating network operator;

“Principal Act” means the Communications Regulation Act 2002;

“programme” has the meaning assigned to it by Regulation 2 of the European Communities (Audiovisual Media Services) Regulations, 2010 (No. 419 of 2010);

“quiz television service” means a premium rate service offered during a television programme where the primary purpose of the programme is to encourage end users to participate in a quiz, draw or competition and where entries or applications are submitted by means of a call;

“sexual entertainment service” means a premium rate service:

- (a) of a sexually suggestive nature,
- (b) of a sexually explicit nature,
- (c) offering explicit sexual advice, or

- (d) for which the associated promotional material indicates, or implies, that the service is of a sexually suggestive or explicit nature;

“specified premium rate service” means a premium rate service which is required to be licensed under section 6 of the Act of 2010 and in accordance with Regulation 3;

“subscription service” means a premium rate service for which a recurring charge is imposed on an end user who has subscribed, and thereby agreed to receive and pay for, such a service;

“terminating network operator” means a person who does any or all of the following, for gain, by agreement with or on behalf of, a content provider or an aggregator provider:

- (a) provides the electronic communications service over which a premium rate service is provided, or
- (b) provides the electronic communications network over which a premium rate service is transmitted.

(2) A word or expression that is used in these Regulations has, except where the context otherwise requires, the same meaning in these Regulations as it has in the Act of 2010.

(3) In these Regulations, unless the contrary intention appears:

- (a) a reference to a regulation is a reference to a regulation in these Regulations; and
- (b) a reference to a paragraph or a subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

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

(5) Nothing in these Regulations shall absolve a premium rate service provider from any requirement in law to obtain any approvals, consents, licences, permissions or authorities that may be necessary for the discharge of the obligations or the exercise of the entitlements under the premium rate service licence.

Classes of premium rate services which require to be licensed

3. Subject to Regulation 4 and Section 6(10) of the Act of 2010 a specified premium rate service is a premium rate service, other than a service which is accessed only via an international call, in respect of which:

- (1) the service is accessed by a premium rate number and the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax). For the purpose of this provision the price per call shall be calculated by

reference to the call as charged to an end user of the “designated undertaking” (as that term is defined in Regulation 2(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and User’s Rights) Regulations 2003 (S.I. No. 308 of 2003), as such designation may vary from time to time;

(2) the service is accessed other than by means of a premium rate number and the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax) for each call; or

(3) the service is:

(a) a chatline service;

(b) a sexual entertainment service;

(c) a children’s service;

(d) a subscription service or

(e) operated by internet dialler software.

Exemptions

4. Regulation 3 shall not apply to a premium rate service provider who provides:

(1) a premium rate service which comprises directory enquiry services and relevant value added services that are provided using the number range 118XX; or

(2) on-demand audiovisual media services.

General licence conditions

5. It shall be a condition of all licences that the premium rate service provider to whom a licence has been granted will:

(1) comply with the Act of 2010, these Regulations, the Code and all other terms and conditions attaching to the licence;

(2) comply with any written directions issued by the Commission from time to time where such directions are for the purposes of the performance of the functions of the Commission under section 10 of the Principal Act and the achievements of the objectives of the Commission under section 12 of the Principal Act;

(3) comply with any written conditions or directions made by the Commission in relation to the Refunds Policy made in accordance with the Act of 2010, these Regulations and the Code;

(4) maintain a register as provided for in Regulation 10(1) and shall comply with any written directions made by the Commission requesting the provision

of any information as provided for in Regulation 10 and shall ensure that the information provided is true and accurate;

(5) establish and maintain adequate procedures to ensure compliance with the Data Protection Acts 1988 and 2003, the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 and any guidance or directions issued by the Office of the Data Protection Commissioner in respect of the processing of personal data;

(6) establish and operate a Complaints Policy to enable it to handle complaints from end users in accordance with Regulation 8;

(7) pay the applicable levy and licence fees set by the Commission;

(8) only enter into contractual arrangements for the provision of specified premium rate services with other premium rate service providers where the other premium rate service providers hold all necessary licences and/or certificates as provided in these Regulations;

(9) comply with any sanctions imposed under the Act of 2010, the Code or pursuant thereto;

(10) not, save with the written prior consent of the Commission, assign the licence or any of the rights conferred by it or lease or let the licence or otherwise transfer to another person any benefit of the licence;

(11) upon becoming aware of the occurrence of any insolvency related event or, of any other event likely to materially affect its ability to comply with these Regulations or any conditions set out or referred to in the licence, notify the Commission of that fact;

(12) ensure that a certificate has been obtained prior to the provision of an authorised service in accordance with Regulation 7.

Special Conditions

6. The Commission may attach special conditions on a premium rate service provider who has had a licence amended, suspended or revoked pursuant to sections 9 and 10 of the Act of 2010, that may include the following:

(1) Prohibiting it from providing certain specified premium rate services that relate to the subject matter of an investigation pursuant to section 9(1) of the Act of 2010;

(2) Requiring it to obtain a certificate in order to be permitted to provide any specified premium rate services, regardless of whether they are authorised services, and/or

(3) Requiring it to post a performance bond with the Commission, on such terms and conditions as the Commission may specify, which bond would be released to the Commission in the event of a subsequent finding pursuant to

section 9(1) of the Act of 2010 that the premium rate service provider had not complied with, or had breached, a condition attached to its licence.

Certificates

7. (1) In respect of the following categories of specified premium rate service, a certificate is required:

- (a) chatline services;
- (b) services advertised as being for the benefit of charity or any not for profit body or organisation;
- (c) sexual entertainment services;
- (d) subscription services;
- (e) internet dialler services; or
- (f) quiz television services.

(2) Premium rate service providers shall ensure that a certificate has been obtained prior to providing an authorised service.

(3) Where more than one premium rate service provider is involved in the provision of a specified premium rate service which requires a certificate pursuant to Regulation 5(12), only one certificate shall be granted by the Commission in respect of that proposed service. The person to whom the certificate is granted shall be responsible for the service.

(4) An application for the grant of a certificate to which these Regulations apply shall be in such form as may from time to time be specified by the Commission and shall:—

- (a) be made in writing to the Commission; and
- (b) be signed by or on behalf of the applicant, whether by means of an electronic signature or otherwise.

Complaints Policy

8. (1) A premium rate service provider shall establish and implement a publicly available policy document for handling complaints from end users in relation to specified premium rate services in respect of any alleged contravention of the Act of 2010, these Regulations or the Code, which policy shall provide for such matters as may be further specified in the Code.

(2) Where an end user has made a complaint relating to a specified premium rate service to a premium rate service provider, which has not been resolved to the end user's satisfaction within the manner set out in the complaints policy set out in Regulation 8(1), the premium rate service provider shall inform the end user in writing (which may, where appropriate, include electronic mail) that he may lodge a complaint with the Commission.

Refunds Policy

9. Where the Commission commences an investigation pursuant to section 9(1) of the Act of 2010, the Commission may direct a premium rate service provider to withhold payments to third parties relating to the specified premium rate service under investigation, for the purposes of implementing refunds in accordance with section 9(1) of the Act of 2010.

Information Gathering

10. (1) Without prejudice to sections 13D(1), 38A and 39 of the Principal Act, premium rate service providers shall, in respect of each specified premium rate service provided by them, maintain an accurate register containing the following information:

- (a) a description of the type of service provided;
- (b) all promotional and advertising materials associated with the provision of the service;
- (c) all numbers, short codes and keywords associated with the provision of the service;
- (d) a description of the billing methods used for the service;
- (e) the price of the service;
- (f) the number of outbound and inbound calls associated with the service;
- (g) the date, time and delivery status for each call made and, where calls are charged by reference to their duration, the duration of each call;
- (h) except in the case of live voice telephony calls, a record of the content of each call, including the content of any information linked to, or incorporated by reference to, such content;
- (i) the audio content of any live voice telephone calls where it has been lawfully recorded by or on behalf of the specified premium rate service provider;
- (j) the total revenue derived from the service; and
- (k) a breakdown of the revenue distribution for the service including details of any revenue share arrangements between the specified premium rate service provider and any network operators, aggregator providers or content providers.

(2) The register referred to in Regulation 10(1) shall be maintained by the premium rate service provider for such periods as may be specified in the Code.

(3) The Commission may, on reasonable prior notice, inspect and take copies of the information referred to in Regulation 10(1) and/or may require the provision of the information by the premium rate service provider in such format and with such frequency as the Commission may reasonably require.

(4) The Commission may carry out an audit, or arrange for the carrying out of an audit, or may require the premium rate service provider to carry out an audit, or to arrange for the carrying out of an independent audit, of any aspect of the premium rate service provider's business in order to ensure compliance with the Act of 2010, these Regulations, the Code or the licence; and the premium rate service provider shall allow the independent auditor, such access to any premises, records or equipment, or to inspect, take copies of and acquire such information, as may reasonably be required for the purposes of carrying out the audit. Any costs associated with an audit conducted under this Regulation shall be the responsibility of the premium rate service provider.

Address for Notices

11. (1) Where a premium rate service provider is domiciled in a Member State of the European Union (the "EU"), the premium rate service provider shall, on the grant of the licence, furnish in writing to the Commission the geographic address and e-mail address within that EU Member State to which notices and other documents under these Regulations may be delivered to him or her or sent by or on behalf of the Commission by post or by any electronic communications service and shall, as occasion requires, so furnish any change in such address or e-mail address.

(2) Where a premium rate service provider is domiciled outside of a Member State of the EU, the premium rate service provider shall, on the grant of the licence, furnish in writing to the Commission an address in Ireland to which notices and other documents under these Regulations may be delivered to him or her or sent by or on behalf of the Commission by post or by any electronic communications and shall, as occasion requires, so furnish any change in such address.

(3) A notice or document delivered, or sent by post or any such telecommunications service to any address or e-mail address furnished in accordance with paragraph (1) or (2) shall be deemed for the purposes of these Regulations to have been duly served by the Commission.

Grant and Renewal of licence/certificate

12. (1) Subject to these Regulations or any other law the Commission may renew a licence or a certificate to which these Regulations apply.

(2) Any licence or certificate that is renewed under this Regulation shall, subject to this Regulation and unless previously surrendered by the premium rate service provider or unless or until it is revoked or subsequently renewed by the Commission, and subject to any suspension thereof, continue in force for such period (not being more than one year) beginning on the date of renewal of the licence or the certificate as specified therein.

(3) Any application for the renewal of a licence or a certificate shall be made at least 28 days before the date of expiration of the relevant licence or certificate and shall be accompanied by the applicable licence fee and such information as the Commission may reasonably require for the purpose of assessing the applications for renewal.

(4) The grant or renewal of a licence or a certificate shall not be construed as warranting that the licence or certificate shall be renewed at any time in the future.

(5) Where a licence has been suspended or revoked pursuant to the Act of 2010, all certificates issued to the relevant premium rate service provider shall forthwith be suspended or revoked as the case may be.



GIVEN under the Official Seal of the Commission for
Communications Regulation,
9 July 2010.

ALEX CHISHOLM,
Chairperson,
On behalf of the Commission for Communications Regulation.

EXPLANATORY NOTE

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

These Regulations provide for the licensing of premium rate service providers by the Commission for Communications Regulation in exercise of the powers conferred upon it by section 7 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010). The Regulations set out the conditions which attach to such licences, including a requirement that certain categories of premium rate service shall require a certificate.

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.

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€3.81



Wt. (B27773). 285. 7/10. Cahill. Gr. 30-15.