



STATUTORY INSTRUMENTS.

**S.I. No. 391 of 2016**

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EUROPEAN UNION (REDUCTION OF COST OF DEPLOYING HIGH-  
SPEED PUBLIC COMMUNICATIONS NETWORKS) REGULATIONS  
2016

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EUROPEAN UNION (REDUCTION OF COST OF DEPLOYING HIGH-SPEED PUBLIC COMMUNICATIONS NETWORKS) REGULATIONS  
2016

I, DENIS NAUGHTEN, 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 2014/61/EU of the European Parliament and of the Council of 15 May 2014<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016.

*Interpretation*

2. (1) In these Regulations—

“access point” means a physical point, located inside or outside a building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available;

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

“Act of 2002” means Communications Regulation Act 2002 (No. 2 of 2002);

“civil works” means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

“decision of the Regulator” means any decision of the Regulator under Regulation 11(3), including any obligation, condition, requirement or direction imposed by the Regulator under procedures adopted under Regulation 11(4) for the purpose of investigating or resolving a dispute referred to in Regulation 11(2) in accordance with Regulation 11(3);

“Directive” means Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014<sup>1</sup>;

“Directive 2002/21/EC” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002<sup>2</sup>,

<sup>1</sup>OJ No. L155, 23.5.2014, P1

<sup>2</sup>OJ No. L108, 24.4.2002, p.33

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 26th July, 2016.*

“electronic communications network” means transmission systems and, where applicable—

- (a) switching equipment or routing equipment, and
- (b) other resources,

including network elements which are not active, which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of—

- (i) satellite networks,
- (ii) fixed terrestrial networks (both circuit-switched and packet-switched, including internet),
- (iii) mobile terrestrial networks,
- (iv) electricity cable systems to the extent that they are used for the purpose of transmitting signals,
- (v) networks used for either or both radio and television broadcasting, and
- (vi) cable television networks,

irrespective of the type of information conveyed;

“end-user” means a user not providing public communications networks or publicly available electronic communications services;

“high-speed public communications network” means a public communication network which is capable of delivering broadband access services at speeds of at least 30 megabits per second;

“high-speed-ready in-building physical infrastructure” means in-building physical infrastructure intended to host elements or enable delivery of high-speed public communications networks;

“in-building physical infrastructure” means physical infrastructure or installations at the end-user’s location, including elements under joint ownership, intended to host either or both wired and wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;

“minimum information regarding the physical infrastructure of a network” means information regarding the location, route, type and current use of the physical infrastructure of the network of another network operator and including details of a contact point;

“minimum information regarding civil works” means information concerning on-going or planned civil works for which a permit has been granted, a permit

granting procedure has commenced or the submission of a permit application is envisaged within a period of 6 months following the making of a request for such information under Regulation 7, related to the physical infrastructure of the network concerned, the location and the type of works, the network elements involved, the estimated date for starting the works and their duration and including details of a contact point;

“network operator” means the provider or operator of a network;

“network termination point” “(NTP)” means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;

“network” means—

- (a) a public communications network,
- (b) the physical infrastructure of a network intended to produce, transport or distribute—
  - (i) gas,
  - (ii) electricity, including public lighting,
  - (iii) heating, or
  - (iv) water, including disposal or treatment of waste water and sewage, and drainage systems, excluding elements of networks used for the provision of water intended for human consumption, or
- (c) transport services, including railways, roads, ports and airports;

“physical infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles, but does not include cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption;

“public communications network” means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

“public communications network operator” means a person who provides or is authorised to provide a public communications network in compliance with Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

“public sector body” has the meaning assigned to it in the definition of “public body” by section 6 of the Freedom of Information Act 2014 (No. 30 of 2014);

“Regulator” means Commission for Communications Regulation;

“single information point” means the single information point operated by the Regulator in exercise of its function under Regulation 10(1)(c);

“statutory permit ” means—

- (a) a licence granted under section 254 (as amended by Regulation 21) of the Act of 2000,
- (b) a permission granted under section 34, 37G or 37N of the Act of 2000, or
- (c) a consent granted under section 53 (as amended by Regulation 19) of the Act of 2002,

for the development (within the meaning of section 2 of the Act of 2000) of elements of a high-speed public communications network;

“water intended for human consumption” means—

- (a) all water either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, from a tanker, or in bottles or containers, or
- (b) all water used in any food-production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption unless the competent national authorities are satisfied that the quality of the water cannot affect the wholesomeness of the foodstuff in its finished form.

(2) A word or expression that is used in these Regulations and that is also used in the Directive or Directive 2002/21/EC has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Directive or Directive 2002/21/EC, as the case may be.

#### *Confidentiality of information*

3. (1) Without prejudice to any obligation to disclose information in accordance with law to which it is subject, a public communications network operator shall preserve the confidentiality of commercially sensitive information obtained by it under these Regulations.

(2) A person who contravenes this Regulation commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

*Access to information from other network operators*

4. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access minimum information regarding the physical infrastructure of a network from the other network operator.

(2) Subject to this Regulation, a network operator shall provide access to minimum information regarding the physical infrastructure of the network, if requested by a public communications network operator.

(3) (a) A network operator may require a public communications network operator who has made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.

(b) A public communications network operator requesting minimum information under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).

(4) A network operator may refuse or limit access to minimum information regarding the physical infrastructure of the network requested by a public communications network operator—

(a) where the public communications network operator has not complied with a request made to it under paragraph (3),

(b) where the request for access does not specify in sufficient detail an area within the network for which the information is requested,

(c) where the request for access does not specify the area envisaged for the deployment of elements of a high-speed public communications network,

(d) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality or operating or business secrets,

(e) where the information requested is publicly available in electronic format, or

(f) where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent term imposed by the network operator for access.

(5) A refusal or limitation of access to information shall be notified to the public communications network operator within—

(a) 2 months following the date of receipt of a request, or

- (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to a request,

together with reasons for the refusal or limitation of access.

(6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation and contain sufficient particulars to enable the information requested to be identified by the taking of reasonable steps.

*Access to networks to survey physical infrastructure*

5. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to conduct on-site surveys of physical infrastructure of any other network.

(2) Subject to this Regulation, a network operator shall, if requested by a public communications network operator, meet all reasonable requests for on-site surveys of physical infrastructure of the other network.

(3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.

(b) A public communications network operator requesting access to conduct a survey under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under paragraph (a).

(4) A network operator may refuse or limit access to another network to conduct on-site surveys of the physical infrastructure of its network—

(a) where the public communications network operator has not complied with a request made to it under paragraph (3),

(b) where the request for access does not specify the elements of the network to which access is requested with a view to deploying elements of a high-speed public communications network,

(c) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality, or operating and business secrets, or

(d) where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent terms or condition imposed by the network operator for access.

(5) A refusal or limitation of access shall be notified to the public communications network operator within—

(a) 1 month following the date of receipt of a request for such access, or



- (b) where other information is requested under paragraph (3), 1 month of receiving the public communications network operator's response to any such request,

together with reasons for the refusal or limitation of access.

- (6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

*Access to other networks to install elements of high-speed public communications network*

6. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access the physical infrastructure of a network and install elements of a high-speed public communications network on the physical infrastructure of the other network.

(2) Subject to this Regulation, a network operator shall, if requested by a public communications network operator, meet all reasonable requests for access to the physical infrastructure of the network operated or provided by it with a view to installing elements of a high-speed public communications network on the physical infrastructure of that network.

- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.

- (b) A public communications network operator requesting access to a network under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).

(4) A refusal or limitation of access, in whole or in part, to the physical infrastructure of a network shall be based on an objective, transparent or proportionate reason which may include, but is not limited to—

- (a) the public communications network operator has not complied with a request made to it under paragraph (3),
- (b) the request for access does not reasonably demonstrate the request relates to the proposed deployment of elements of a high-speed public communications network or does not specify an area within the other network it is proposed to access or does not set a timeframe for the requested access and deployment,
- (c) the technical unsuitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed public communications networks notified,

- (d) an absence of space to host the elements of high-speed public communications networks or an absence of space due to the network operator's future reasonable needs for space,
  - (e) for reasons of public health or safety,
  - (f) for reasons of the integrity or security of the other network as a network or as part of critical national infrastructure,
  - (g) the availability of viable alternative means of wholesale physical network infrastructure access provided by the other network operator and suitable for the provision of high-speed electronic communications networks provided that such access is offered under fair and reasonable terms and conditions,
  - (h) the right to property of the owner of the physical infrastructure, in cases where the network operator is not the property owner,
  - (i) the right to property of any person other than the network operator,
  - (j) the risk of serious interference by the planned elements of the high-speed public communications network or the planned services to be provided with the provision of other services over the same physical infrastructure, or
  - (k) the request is otherwise not reasonable in all the circumstances.
- (5) A refusal or limitation of access shall be notified to a public communications network operator within—
- (a) 2 months following the date of receipt of a request for such access, or
  - (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to any such request,

together with reasons for the refusal or limitation of access.

(6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

*Access to information on current or planned civil works on other networks*

7. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access minimum information regarding civil works, current or planned, on any other network from a network operator.

(2) Subject to this Regulation, a network operator shall, if requested by a public communications operator, provide minimum information regarding civil works, current or planned, to a public communications network operator and a single information point.

- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.
- (b) A public communications network operator requesting minimum information under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).
- (4) A network operator may refuse a request for minimum information regarding civil works, current or planned—
- (a) where the public communications network operator has not complied with a request made to it under paragraph (3),
- (b) where the request for access does not specify an area within the network for which information is requested,
- (c) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality or operating or business secrets,
- (d) where the information requested is publicly available in electronic format or access to such information is available via a single information point, or
- (e) where the request is not reasonable in all the circumstances.
- (5) A refusal shall be notified to the public communications network operator within—
- (a) 2 weeks following the date of receipt of the application, or
- (b) where other information is requested under paragraph (3) 2 weeks of receiving the public communications network operator's response to any such request,

together with reasons for the refusal.

(6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation and contain sufficient particulars in relation to the information concerned to enable the information requested to be identified by the taking of reasonable steps.

*Right to negotiate agreements to co-ordinate civil works*

8. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to coordinate civil works with any other network operator for the purpose of deploying elements of a high-speed public communications network.

(2) Subject to this Regulation, any network operator performing, directly or indirectly, civil works shall, if requested by a public communications network operator, meet any reasonable request to coordinate civil works with a view to deploying elements of a high-speed public communications network.

(3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.

(b) A public communications network operator requesting to co-ordinate civil works under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).

(4) A network operator may refuse to coordinate civil works where—

(a) the public communications network operator has not complied with a request made to it under paragraph (3),

(b) the civil work is not, or will not be, wholly or partly publicly funded,

(c) the request for an agreement is not for the purpose of deploying elements of a high-speed public communications network,

(d) the coordination would impose additional costs for the initially envisaged civil works,

(e) the coordination could delay the planned commencement or completion of the civil works and such delay would have a cost implication for the network operator,

(f) the coordination would impede control over the coordination of the civil work,

(g) the request to coordinate is filed less than 1 month before the planned or actual (whichever is the latest) submission of an application for any required statutory permit required to undertake the works,

(h) the public communications network operator has not complied with any non-discriminatory or transparent term imposed by the network operator for access, or

(i) the request is otherwise not reasonable in all the circumstances.

(5) A refusal shall be notified to a public communications network operator within—

(a) 1 month following the date of receipt of a request, or

- (b) where other information is requested under paragraph (3), 1 month of the date of receiving the public communications network operator's response to any such request,

together with reasons for the refusal.

(6) A request under this Regulation shall be made in writing, shall state that the request is made under this Regulation and contain sufficient particulars to enable the information requested to be identified by the taking of reasonable steps.

*Right to access property to install connections to high-speed communication networks*

9. (1) Subject to these Regulations, a public communications network operator has,

upon request, the right to—

- (a) roll out its network at its own costs, up to an access point and a network termination point, and
  - (b) use an access point or in-building physical infrastructure for the purpose of deploying elements of a high-speed public communications network.
- (2) Subject to this Regulation, any holder of a right to use the access point and in-building physical infrastructure shall meet all reasonable requests for access from public communications network operators under fair and non-discriminatory terms and conditions, including price, where appropriate.
- (3) (a) A holder of a right to use the access point and in-building physical infrastructure may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.
  - (b) A public communications network operator requesting access under paragraph (1) shall furnish such other information concerning the request as the holder of a right to use the access point and in-building physical infrastructure may reasonably require under paragraph (a).
- (4) The right to access under paragraph (1) may be refused where—
- (a) the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) duplication of the access point and in-building physical infrastructure is technically possible and economically efficient,
  - (c) access to an existing network termination point, which is suitable for the provision of high-speed public communications services, is available to the public communications network operator on objective,

transparent, proportionate and non-discriminatory terms and conditions, or

- (d) the required access to an access point or in-building physical infrastructure is contrary to the right to property of any property owner other than the holder of the right to use the access point or the in-building physical infrastructure.

(5) A refusal shall be notified to a public communications network operator within—

- (a) 2 months of the date of receiving a request, or
- (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to such a request,

together with reasons for the refusal.

(6) A property owner may refuse access to any property, which is not an access point or in-building physical infrastructure or physical infrastructure of a network, where the nature of the works and any required reinstatement work is not agreed.

(7) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

#### *Functions of Regulator*

10. (1) The Regulator shall carry out—

- (a) the functions of ensuring compliance with these Regulations by network operators and the holder of a right to use access points or in-building physical infrastructure to which these Regulations apply,
- (b) the functions of the national dispute settlement body referred to in Articles 3, 4, 5, 6 and 9 of the Directive and in accordance with Regulation 11 in disputes between a public communications network operator and another network operator or a holder of rights to access an access point or in-building physical infrastructure,
- (c) the functions of the single information point referred to in Articles 6 and 7 of the Directive regarding access to information provided to the single information point by network operators and to facilitate access via a single information point to information regarding statutory permits for civil works required to develop elements of a high-speed electronic communications network including, where appropriate, exempted development provisions and the conditions and procedures applicable to granting a statutory permit.

(2) The Regulator may impose terms and conditions and may charge fees for access to the single information point to cover its costs of providing and maintaining the single information point established as a requirement of paragraph (1)(c).

(3) In this Regulation “exempted development” means exempted development (within the meaning of section 2 of the Act of 2000) for the development (within the meaning of section 2 of the Act of 2000) of electronic communications infrastructure and any associated physical infrastructure.

*Regulator’s dispute settlement process*

11. (1) The Regulator is appointed as the national disputes settlement body for the purposes of these Regulations and the Directive.

(2) This Regulation applies to disputes arising between a public communications network operator and another network operator, or a holder of rights to use access points or in-building physical infrastructure regarding—

- (a) access to minimum information regarding physical infrastructure of a network and access to minimum information regarding civil works, in compliance with Regulations 4 and 7, respectively,
- (b) access to other networks in compliance with Regulations 5 and 6,
- (c) agreements to coordinate civil works in compliance with Regulation 8, and
- (d) access to access points and in-building physical infrastructure in compliance with Regulation 9.

(3) In the event of a dispute referred to in paragraph (2), the Regulator shall, subject to paragraph (5), at the request of either party submitted after—

- (a) the period specified in Regulation 4(5)(a), 5(5) (a), 6(5) (a), 7(5) (a), 8(5) (a) or 9(5) (a) has expired, or
- (b) where additional information has been requested in accordance with Regulation 4(3)(a), 5(3)(a), 6(3)(a), 7(3)(a), 8(3)(a) or 9(3)(a), the period provided for in Regulation 4(5)(b), 5(5)(b), 6(5)(b), 7(5)(b), 8(5)(b) or 9(5)(b), has expired,

initiate an investigation of the dispute and shall taking full account of the principle of proportionality make a decision to resolve the dispute, including the setting of fair and reasonable terms and conditions, including price where appropriate, as soon as possible but, except in circumstances which the Regulator considers exceptional—

- (i) regarding a public communication network operator’s rights under Regulation 4, 5, 7, 8 or 9, within 2 months following the date of receipt of all information required by the Regulator for determination of the dispute, or

- (ii) regarding a public communication network operator's rights under Regulation 6, within 4 months following the date of receipt of all information required by the Regulator for determination of the dispute.

(4) The Regulator shall establish, maintain and publish its dispute settlement procedures and shall ensure that all investigations and decisions are handled in accordance with those procedures. Such procedures shall include power for the Regulator under a decision to impose obligations, requirements or conditions on network operators and to give to network operators directions regarding such.

- (5) (a) The Regulator may make exemptions, from time to time, which shall be fully reasoned, from the dispute settlement procedures referred to in paragraph (4) for disputes—

- (i) on access to minimum information regarding physical infrastructure of a network that it considers technically unsuitable for the deployment of elements of a high-speed public communications network or in case of critical national infrastructure,
- (ii) on the coordination of civil works of insignificant importance, for reasons of value, size or duration, or in the case of critical national infrastructure, and
- (iii) on access to minimum information regarding civil works of insignificant value or in the case of critical national infrastructure,

after publishing the text of the proposed exemptions, specifying the period within which submissions relating to the proposal may be made by interested parties and having considered any submissions received.

- (b) The Regulator shall notify any such exemptions to the Commission of the European Union as soon as practicable.

(6) The Regulator may charge fees for access to the dispute settlement procedure to cover its costs of performing its functions under this Regulation.

(7) The Regulator may decide not to initiate an investigation of a dispute referred to in paragraph (3) where the Regulator is satisfied that the dispute falls within an exemption from the dispute settlement procedures provided for in paragraph (5) or if legal proceedings in relation to the dispute have been initiated.

(8) Where the Regulator makes a decision under paragraph (3), or decides under paragraph (7) not to initiate an investigation, the Regulator shall notify the parties to the dispute in accordance with Regulation 13.

(9) In making a decision the Regulator shall have regard to the case for refusals or limitations, as the case may be, as provided for in Regulation 4, 5, 6, 7, 8 or 9.



(10) A network operator and the holder of a right to use access points or in-building physical infrastructure to which these Regulations apply shall comply fully with any decision made by the Regulator.

(11) A network operator or the holder of a right to use access points or in-building physical infrastructure to which these Regulations apply that—

- (a) fails to co-operate with an investigation of a dispute conducted by the Regulator under this Regulation, or
- (b) fails to comply fully with a decision of the Regulator,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine, or
- (ii) on conviction on indictment, to a fine not exceeding €100,000.

(12) In proceedings for an offence under paragraph (11) it is a defence to establish that—

- (a) reasonable steps were taken to co-operate with the relevant investigation or to comply with the decision of the Regulator,
- (b) it was not possible to co-operate with the relevant investigation or to comply with that decision, or
- (c) legal proceedings have been initiated in relation to the dispute.

(13) If the Regulator has made an application under Regulation 12 to the High Court to secure a person's compliance with a decision of the Regulator, the Regulator may not bring proceedings against the person for an offence under paragraph (11) or give notice under section 44 of the Act of 2002 in respect of the person's failure to fully comply with the decision.

(14) Any decision of the Regulator imposed on a public communications network operator by the Regulator in resolving a dispute shall, where appropriate, take into account the objectives set out in Article 8 of Directive 2002/21/EC to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services, to contribute to the development of the internal market and to promote the interests of the citizens of Member States.

#### *Compliance orders*

12. (1) Subject to paragraph (2), where the Regulator finds that a network operator or a holder of rights to use an access point or in-building physical infrastructure has not complied fully with a decision of the Regulator, the Regulator may apply by motion to the High Court to make a compliance order under paragraph (5).

- (2) The Regulator may make an application under subsection (1) only if—

(a) not later than 1 month before making the application, the Regulator has served on the network operator or the holder of a right to use an access point or in-building physical infrastructure concerned a notice in writing, notified to it in accordance with Regulation 13, requiring the network operator or holder of such right concerned to comply fully with a decision to which paragraph (1) applies and has given the network operator or holder of such right an opportunity to make representations to the Regulator about the matter and to comply fully with the decision, and

(b) the network operator or holder of such right has failed to so comply.

(3) The High Court may hear the application only if it is satisfied that the Regulator has complied with paragraph (2)(a) and has served a copy of the application on the network operator or holder of a right to use access points or in-building infrastructure concerned. On being served with a copy of the application, that network operator or holder of such right becomes the respondent to the application.

(4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (1). The Court may not refuse interim or interlocutory relief merely because the Regulator may not suffer damage if relief were not granted pending determination of the application.

(5) On the hearing of an application made under paragraph (1), the High Court may make an order requiring the respondent to comply with the decision of the Regulator or any part of it not complied with or may refuse the application.

(6) If the High Court makes an order under this Regulation, it may make such ancillary orders as it considers appropriate.

(7) (a) An application for an order under paragraph (1) 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 decision of the Regulator, as the Regulator may propose, being not more than €250,000, as appropriate in the light of the non-compliance or any continuing non-compliance.

(b) 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 decision.

(c) 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.

- (d) Any financial penalty ordered by the High Court to be paid by an operator or undertaking under this paragraph shall be paid to and retained by the Regulator as income.
- (e) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—
  - (i) its duration,
  - (ii) the effect on consumers, users and other operators,
  - (iii) the submissions of the Regulator on the appropriate amount, and
  - (iv) any excuse or explanation for the non-compliance.

(8) Where the Regulator has brought proceedings for an offence under Regulation 11(11) or given a notice under section 44 of the Act of 2002 in respect of an alleged offence under Regulation 11(11), 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 decision of the Regulator to which the proceedings or notice relates.

*Service of notifications by Regulator*

13. (1) Where the Regulator makes a decision, it shall be in writing, state the reasons on which it is based and be addressed to the parties to the dispute and, as soon as practicable, be sent or given in any of the following ways:

- (a) by delivering it to the parties to the dispute;
- (b) by leaving it at the addresses at which the parties to the dispute ordinarily carry on business;
- (c) by sending it by pre-paid registered post addressed to the parties to the dispute at the addresses at which the parties to the dispute ordinarily carry on business;
- (d) if an address for service has been furnished by a party to the dispute to the Regulator, by leaving it at, or sending it by pre-paid registered post to, that address;
- (e) in any case where the Regulator considers that the immediate giving of the decision 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 a party to the dispute carries on business or, if an address for the service of notices has been furnished by a party to the dispute, 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 decision, 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 party to a dispute which is a company (within the meaning of the Companies Act 2014) 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.

*Offences by bodies corporate*

14. (1) If an offence under Regulation 3(2) or 11(11) is committed by a body corporate and 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 the body in connection with the member's functions of management as if the member were a director or manager of it.

*Right of appeal against decision of Regulator*

15. (1) This Regulation applies to a decision of the Regulator.

(2) A person who is affected by a decision of the Regulator may appeal to the High Court against the decision.

(3) Any appeal, referred to in paragraph (2), shall be lodged within 28 days after a parties to a dispute have been notified of the decision.

*Regulator to be respondent to appeal*

16. (1) The High Court may hear the appeal referred to in Regulation 15(2) 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*

17. (1) The High Court shall hear and determine the appeal referred to in Regulation 15(2).

(2) The orders that may be made by the High Court on the determination of the appeal are limited to the following—

- (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 reconsidered, either with or without the hearing of further evidence, in accordance with the directions of the High Court.

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

18. (1) Subject to this Regulation, 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, the High Court on the application to it by the appellant, taking into account any submission made by any other interested party in relation to such application, may make such order staying the decision of the Regulator, or a part of that decision, as the High Court considers appropriate pending the 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 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 decision of the Regulator, or
- (ii) if no period is so specified, the giving of a decision of the Regulator on the appeal by the High Court.

*Underground public communications infrastructure*

19. Section 53 (inserted by section 21 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010)) of the Act of 2002 is amended—

(a) in subsection (1)(a)(ii), by inserting after “emergency roadworks” the following:

“or under subsection (4A) where that subsection applies”,

(b) by inserting after subsection (4) the following:

“(4A) (a) Subject to this subsection—

- (i) where an application is made to an authority by a network operator under this section to carry out roadworks and the authority fails to make a decision in respect of

the application within the period of 4 months commencing on the date of receipt of the application, consent is deemed to be granted to the network operator on the day following the expiration of that period of 4 months to carry out the roadworks, and

- (ii) where the authority has requested additional information from the applicant regarding the application and the authority fails to make a decision in respect of the application within the period of 4 months from the date on which it receives the applicant's response to the request, consent shall be deemed to have been granted on the day following the expiration of that period of 4 months to carry out the roadworks.
- (b) A deemed decision to grant consent under this subsection shall be subject to the conditions that—
- (i) in advance of the commencement of those roadworks the network operator concerned informs the authority concerned, and
  - (ii) the network operator concerned complies with any conditions the authority concerned may decide while the roadworks are in progress or completed.
- (c) This subsection does not apply in respect of an application where—
- (i) within 4 months of receipt of the application, an authority serves notice on the applicant that for exceptional reasons stated in the notice it shall not decide on the application within a period of 4 months commencing on the date of receipt of the application,
  - (ii) the applicant is not in compliance with any other requirement imposed under law, or
  - (iii) the applicant gives to the authority in writing his or her consent, for stated reasons, to the extension of the period concerned for making a decision on the application, in which case the period for making the decision shall be extended for the period consented to by the applicant.”,

and

- (c) in subsection (6)—
  - (i) by inserting after “(4)” where it first appears in that subsection “or (4A)”, and

- (ii) by substituting in paragraphs (a) and (c) “section 53(3), (4) or (4A)” for “section 53(3) or (4)”.

*Fees payable to planning authorities*

20. Section 246 of the Act of 2000 is amended in subsection (3) by inserting after paragraph (b) the following:

- “(c) With regard to applications under subsection (1)(e), notwithstanding anything contained in section 254(5A), a deemed decision to grant a licence shall not be regarded as having been made on a day which is earlier than the day following the expiration of 4 months commencing on the day on which the authority is in receipt of the fee and section 254(5A) shall be construed subject to and in accordance with this paragraph.”.

*Licensing of appliances and cables on public roads*

21. Section 254 (as amended by section 54 of the Act of 2002) of the Act of 2000 is amended by inserting after subsection (5) the following:

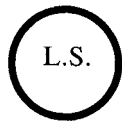
“(5A) (a) Subject to this subsection, where in respect of an application for a licence to erect, construct, place or maintain overground electronic communications infrastructure and any associated physical infrastructure—

- (i) a planning authority fails to make a decision within a period of 4 months commencing on the date of receipt of an application, a decision (referred to in this subsection and in section 246(3)(c) as a ‘deemed decision to grant a licence’) of the planning authority to grant the licence shall be deemed to have been made on the day following the expiration of that period of 4 months, and
- (ii) where a planning authority requests additional information from the applicant regarding the application and the planning authority has not made a decision within a period of 4 months of receiving the applicant’s response to the request, a deemed decision to grant a licence shall be deemed to have been made on the day following the expiration of that period of 4 months.

(b) A deemed decision to grant a licence shall be subject to the condition that the network operator concerned, in advance of the commencement of the works to erect, construct, place or maintain electronic communications infrastructure or any associated physical infrastructure, shall inform—

- (i) the planning authority concerned,
- (ii) where planned work is on a national road, the National Roads Authority, and

- (iii) where planned work is on any regional or local road, the road authority in whose functional area the network operator proposes to carry out the work.
- (c) Where a planning authority refuses to grant a licence under this section, it shall state the main reasons for the refusal when notifying its decision to the applicant for the licence.
- (d) This section does not apply in respect of an application where, within 4 months of receipt of the application—
  - (i) the planning authority serves notice on the applicant that for exceptional reasons stated in the notice it shall not decide on the application within a period of 4 months commencing on the date of receipt of the application, or
  - (ii) the applicant gives to the planning authority in writing his or her consent, for stated reasons, to the extension of the period concerned for making a decision on the application, in which case the period for making the decision shall be extended for the period consented to by the applicant.”.



GIVEN under my Official Seal,  
20 July 2016.

DENIS NAUGHTEN,  
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 legal effect to provisions of Directive 2014/61/EU of the European Parliament and to the Council of 15th May 2014 concerning measures to reduce the cost of deploying high-speed electronic communications networks.

The provisions of Article 5.2 of the Directive relating to access to information held by public sector bodies and article 5.6 relating to disputes regarding access to information held by public sector bodies are not transposed in the Regulations as adequate provisions were already on the statute book by virtue of Sections 11 and 22, respectively, of the Freedom of Information Act of 2014 (No. 30 of 2014) to access records held by public bodies and to an independent review of any refusal of access to records held by a public body.

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