



STATUTORY INSTRUMENTS.

**S.I. No. 343 of 2019**



EUROPEAN UNION (OPEN INTERNET ACCESS) REGULATIONS 2019

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European Union (Open Internet Access) Regulations 2019

I, RICHARD BRUTON, Minister for Communications, Climate Action and Environment, 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 full effect to Articles 1 to 6 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015<sup>1</sup>, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Open Internet Access) Regulations 2019.

2. (1) In these Regulations –

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

“EU Regulation” means Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015<sup>1</sup>;

“Regulator” means the body designated as the national regulatory authority under Regulation 3;

“undertaking” means a person engaged in the provision of publicly available electronic communications networks or services, including internet access services, who is subject to Articles 3, 4 and 5 of the EU Regulation.

(2) A word or expression which is used in these Regulations and which is also used in the EU Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EU Regulation.

3. The Commission for Communications Regulation is designated as the national regulatory authority in the State for the purposes of Articles 3, 4 and 5 of the EU Regulation and these Regulations.

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<sup>1</sup> OJ No. L310, 26.11.2015, p.1

4. (1) The Regulator may give a direction to an undertaking requiring the undertaking to take a measure under Article 5(1) of the EU Regulation within the period specified in the direction.

(2) Where the Regulator proposes to give a direction to an undertaking under paragraph (1), the Regulator shall –

- (a) notify the undertaking of the proposed direction, and
- (b) invite the undertaking to make representations to the Regulator concerning the proposal within 21 days of the service of the notice.

(3) The Regulator, in making a decision as to the giving of a direction, shall take into consideration any representations made to it under paragraph (2)(b).

(4) The Regulator may, as it thinks fit, amend or revoke a direction given under paragraph (1).

5. Section 10(1) of the Act of 2002 is amended by the insertion of the following paragraph after paragraph (ac):

“(ad) to closely monitor and ensure compliance by undertakings, including providers of internet access services within the meaning of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015<sup>1</sup>, with their obligations under Articles 3, 4 and 5 of those Regulations,”.

6. (1) The Regulator may certify one or more monitoring mechanisms to measure the performance of internet access services for the purposes of Article 4(4) of the EU Regulation.

(2) Information regarding a monitoring mechanism certified under paragraph (1) shall be published on the website of the Regulator.

7. Regulation 27 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011) applies to a dispute involving an end-user and an undertaking relating to the rights and obligations laid down in Article 3 or Article 4(1) of the EU Regulation, subject to the modification that a reference to an undertaking in Regulation 27 shall be construed as a reference to an undertaking under these Regulations and to any other necessary modification.

8. (1) Where the Regulator finds that an undertaking has not complied with-

- (a) its obligations under Article 3, 4 or 5 of the EU Regulation, or
- (b) a direction under Regulation 4(1) within the period specified in the direction,

the Regulator shall notify the undertaking of those findings and give the undertaking a period within which to comply with its obligations or the direction.

(2) 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 that the Regulator considers confidential.

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

(4) Where, at the end of the period specified by the Regulator in a notification under paragraph (1), the Regulator is of the opinion that the undertaking concerned has not complied with the obligation or direction, the Regulator may, whether or not the non-compliance is continuing and subject to paragraph (9), apply to the High Court for an order under paragraph (6).

(5) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (4) and 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.

(6) The High Court may, on the hearing of the application referred to in paragraph (4), make such order as it thinks fit which may include –

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation or direction,
- (c) an order directing the remedy of any non-compliance with the obligation or direction, or
- (d) an order as provided for in paragraph (8).

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

- (8) (a) An application for an order under paragraph (4) 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 or direction, as the Regulator may propose 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 obligation or direction.
- (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 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 with the obligation or direction, including -
- (i) its duration,
  - (ii) the effect on consumers, users and other operators,
  - (iii) the submissions of the Regulator on the appropriate amount,
  - (iv) any excuse or explanation for the non-compliance, including any evidence of the undertaking that reasonable steps were taken to comply with the obligation or direction or that it was not possible to comply with the obligation or direction, and
  - (v) any evidence that the undertaking profited or was unjustly enriched, whether directly or indirectly, as a result of the non-compliance.

(9) 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 or direction to which the proceedings or notice relates.

9. (1) An undertaking which fails to comply with –
- (a) its obligations under Article 3, 4 or 5 of the EU Regulation, or
  - (b) a direction under Regulation 4(1) within the period specified in the direction,

shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(2) In proceedings for an offence under paragraph (1), it is a defence to show that -

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

(3) Summary proceedings for an offence under this Regulation may be brought and prosecuted by the Regulator.

(4) If –

- (a) the Regulator has made an application under Regulation 8(4) to the High Court to secure an undertaking's compliance with an obligation or direction, and
- (b) it is an offence to fail to comply with that obligation or direction,

proceedings may not be brought against the undertaking for such an offence under this Regulation or notice may not be given under section 44 of the Act of 2002 in respect of the undertaking's failure to comply with the obligation or direction.

(5) An offence under this Regulation is an offence to which section 44 of the Act of 2002 applies.

10. Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

11. (1) Where the Regulator issues a direction or notification under these Regulations, it shall be in writing, state the reasons on which it is based, 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 carries on business or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by prepaid registered post to the address at which the undertaking ordinarily carries on business or, in a case in which an address for service has been furnished, to that address;
- (d) where there is a facility for receiving the text of the direction or notification by electronic means at the address at which the undertaking ordinarily carries on business or, in a case in which an address for service has been furnished, at that address, by transmitting the text of the direction or notification by such means to such address, provided that it is also delivered in any of the other ways referred to in this paragraph.

(2) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 (No. 38 of 2014) or an existing company within the meaning of that Act shall be 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.



GIVEN under my Official Seal,  
9 July, 2019.

RICHARD BRUTON,  
Minister for Communications,  
Climate Action and Environment.



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 full effect to Articles 1 to 6 of Regulation (EU) 2015/2120 of the European parliament and the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public communications networks within the Union.

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