



Commission for
Communications Regulation

Guidelines

Future Regulation of Electronic Communications Networks and Services

Guidelines relating to General Authorisations

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An Coimisiún um Rialáil Cumarsáide

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1 Foreword

A new regulatory framework comes into effect today. The most visible result is the change in the legal basis under which networks and services may be provided. It will for instance no longer be necessary to hold a telecommunications licence but Wireless Telegraphy licence continue to be required. Instead, there is a general entitlement to provide electronic networks and/or services subject to compliance with standard conditions.

Since March 2002 ComReg and its predecessor, the ODTR, have engaged in consultations on a number of aspects concerning the new framework. This week the Minister for Communications, Marine and Natural Resources has made the necessary Regulations to give legal effect to the new framework www.dcmnr.gov.ie/display.asp/pg=929. With the publication of those Regulations, it is now possible to give a complete overview of the new framework.

This document is provided for the sole purpose of providing guidance on the operation of the new regulatory framework and outlining the procedures which ComReg will apply in handling notifications.

These Guidelines are not legally binding and should not be regarded as a substitute for reviewing the conditions of a General Authorisation or of the applicable legislation. This document may be amended from time to time and is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally.

Etain Doyle,
Chairperson

2 Regulatory Framework

The Authorisation Directive sets out the mechanism through which electronic communications networks and services may be provided. Under the Authorisation Regulations (S.I No 306 of 2003) which transpose the Directive, any person may provide an electronic communications network and/or service, provided they have notified ComReg in advance (unless the network or service concerned is exempt - see below). There is, therefore, no longer a requirement to apply for a licence to provide an electronic communications network and/or service. Under the terms of the Authorisation Regulations, operators are free to commence operations once a completed notification has been received, but operations are subject to the conditions set out in a General Authorisation.

Under the Authorisation Regulations, ComReg may exempt particular classes of networks or services from the notification requirement. ComReg has determined that operators who do not offer electronic communication networks and/ or services to third parties are exempt. Exempted operators are, however, still obliged to operate in conformity with the General Authorisation Conditions. Some examples of networks and services that do not require notification are as follows:

Networks:

- Self-provided infrastructure strictly for own use. Operators of radio-based facilities may however be subject to requirements under the Wireless Telegraphy Acts.

Services:

- Provision and management of self-provided networks strictly for own use.
- Own-use services run over self-provided networks or externally acquired capacity. For example, the provision of an Intranet using a mixture of self-provided bridges and routers, in-building wiring and leased lines would not require notification.
- Provision and management of customer equipment. For example, when a company contracts out the management of its internal telephone and data networks to a third party.
- Provision of network access and delivery of radio or television content services to end users at a retail level (while the networks and broadcast services at a wholesale level to third parties are subject to notification)

The notification requirement therefore applies to the following categories.

Networks: networks used for the provision of services to third parties. Examples include:

- Fixed Telephony Network
- Mobile Telephony Network
- Satellite Network
- Wireless Network

- Broadcast Networks – terrestrial transmission, deflectors, cable, MMDS, satellite
- Electricity Cable systems (where used for transmission of signals)

Services: Any Electronic Communications Service provided to third parties. Examples include:

- Publicly available telephone services
- Other Voice Services
- Broadcast Services
- Data Services
- Internet Access Services

While most of the above services were licensable under Section 111 of the 1983 Act, some additional services now come within the scope of Electronic Communications Service. These include:

- Provision of “reseller” services
- Community repeater services

The Authorisation Regulations define Electronic Communications Networks and Services for the purposes of the regulatory framework as follows:

“electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

“electronic communications service” means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excludes -

- (a) a service providing, or exercising editorial control over, content transmitted using electronic communications networks and services, and
- (b) an information society service, as defined in Article 1 of Directive 98/34/EC, which does not consist wholly or mainly in the conveyance of signals on electronic communications networks.

The provision and use of radio based services continue to be subject to the Wireless Telegraphy Act. Under the Act, radio apparatus, if not licence exempt (subject to meeting defined operating conditions), requires a licence. The current procedures which apply to such licences will continue in force subject to some modifications which are set out in document 03/84 – “Wireless Telegraphy Licences: future applicability of licence conditions”.

As regards numbers, separate applications must also be made under the new framework for rights of use for numbers and number ranges. The procedures which are currently in place will continue to apply subject to the removal of the condition that an applicant be the holder of a telecommunications licence. From 25 July the grant of number rights of use will be subject to the applicant having made a notification in connection with a General Authorisation or are deemed to be authorized under the Authorisation Regulations.

Transition Arrangements:

Under the Regulations, existing licensees under a number of categories are deemed to be authorised from 25 July to provide networks and services in advance of making a statutory notification. This ensures that there is no interruption in their operations during the period between the ending of licensing (24 July) and the date by which notifications are sent to ComReg. Such licensees are however required to submit a notification and ComReg will allow until 31 August 2003 for this requirement to be met. In this connection, ComReg will contact the affected licensees directly.

Transition from Licence conditions to Authorisation conditions

Appendix 1 gives a guide to the status of the conditions of a General Telecommunications Licence under the new framework.

In addition to conditions which apply to all operators, the new framework makes provisions for specific obligations to apply to operators with Significant Market Power and Universal Service Obligations.

Existing obligations regarding universal service and various consumer protection measures are set out both in licence obligations and in the Voice Telephony and Universal Service Regulations, 1999 (S.I. 71 of 1999). *eircom* is currently designated as the Universal Service Provider and ComReg has introduced regulatory frameworks around the consumer protection obligations, for example, Code of Conduct on Complaint Handling and Quality of Service initiatives.

Over the last number of months, ComReg has consulted on how the above measures can be applied in light of the new EU Framework. USO and consumer protection measures apply in light of the requirements set out in the Universal Service Regulations. ComReg issued Decision Notices today regarding the requirements that apply in relation to Universal Service and Users Rights.

3 Notification Procedure

3.1 Completion of Notification Form

Persons and/or companies intending to provide electronic communications networks and/or services are required to complete a Notification Form. The Notification Form requests a minimal amount of information as follows:

- Name and address of Notifying Person
- Contact Details
- Network/Service Description
- Whether Networks or Services are to be publicly available
- Estimated Date of Commencement of Network or Service

There is no fee for the submission of the Notification Form.

If there is any doubt about whether it is necessary to make a notification, full details should be supplied to ComReg for guidance. It should also be noted that where networks or services are provided by a number of separate legal entities with common ownership or control (e.g. different subsidiaries established to provide distinct services) a separate notification form should be completed by each legal entity). When forwarding notifications, companies should indicate, for the information of ComReg, the identity of connected companies which are also engaged in the provision of networks or services.

The notification form (Doc 03/82) may be downloaded from the ComReg Website and completed electronically. Persons who are required to make a notification should submit a completed copy of this Notification Form in an envelope clearly marked "Electronic Communications Notification Form" addressed to:-

Commission for Communications Regulation,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1.

ComReg intends to facilitate the electronic submission of notifications, but arrangements for this are not yet fully in place. In the meantime, the form may be completed electronically and sent by e-mail to notify@comreg.ie but a hard copy of the form must also be forwarded as above.

3.2 Timing of Notifications

Notifications will be accepted from today. Persons who have submitted a completed Notification Form are deemed to be authorised and may commence operations without further formalities subject of course to meeting any other requirements provided for in law, such as planning permission.

3.3 Handling of Notifications

In handling a notification, ComReg will ensure that the notification form is properly completed and may, if necessary, contact the notifying entity. The notification process comprises the following steps:

- (i) A completed Notification Form is sent to ComReg. If the form is completed correctly, the person is deemed to be authorised on the date of receipt of the Notification Form by ComReg.
- (ii) ComReg may request further information from a notifying person if, in its opinion, the notification form submitted has not been completed properly.
- (iii) ComReg will publish details of the name, address and telephone number of the notifying person on a register of undertakings that have notified ComReg along with details of the intended network and/or service.

3.4 Declarations

In response to the receipt of a properly completed Notification Form, ComReg will issue a standard acknowledgment in the following format:

- (a) Confirmation that the person has submitted a notification of his/her intention to provide an electronic communications network and/or service; and
- (b) detailing under what circumstances the person has the right to:
 - (i) apply for a consent under Section 53 of the Communications Regulation Act, 2002 to apply for a consent to carry out road works from the relevant road authority;
 - (ii) negotiate interconnection; and
 - (iii) obtain access or interconnection in order to facilitate the exercise of those rights.

ComReg intends to issue such declarations as a matter of course within one week of the receipt of a correctly completed Notification Form. A copy of the pro-forma acknowledgment is appended as Appendix 2

Appendix 1 Status of Conditions of a General Telecommunications Licence under new framework.

Condition	Provision	Status under New Framework
2	Nature of licence	
2.1	Non-exclusive	This is no longer applicable as a right to provide networks and services will no longer require a licence
2.2	Conditions on transfer	This is no longer applicable as transfer of right to provide networks and services will not arise.
2.3	Application of compliance and enforcement conditions when more than one licence held	This is no longer applicable as provision will not arise.
2.4	Application of SMP conditions to affiliates	This is no longer applicable - not a condition of a General Authorisation but can be applied under the SMP obligations because of separation of conditions of a General Authorisation and SMP conditions
2.5	No implied permit to ignore other legal obligations. Also no liability on ComReg for costs incurred in providing licensed services	This remains applicable due to Clause 2.5 of General Authorisation
2.6	‘whole agreement’	This remains applicable due to Clause 2.6 of General Authorisation
2.7	Payment of licence application fee	This is no longer applicable -There is no provision for notification fee – expenses of handling notifications general expenses to be covered by levy.
2.8	Payments under levy order	Remains applicable due to Clause 13.1 of General Authorisation and levy order
3	Compliance	
3.1	Provision of information	Still applicable due to Clause 6.1 of General Authorisation
3.2	ComReg’s right to publish information	Still applicable due to Clause 2.7 of General Authorisation makes General Authorisation subject to provisions of Regulations, national and EU legislation. Regulation 17(11) of Framework Regulations allows ComReg to publish such information as would contribute to an open and competitive market

Condition	Provision	Basis under New Framework
3.3	Authorised officers	Still applicable due to Clause 3.2 of General Authorisation . Section 39 of 2002 Act and enforcement/compliance provisions of each Regulation
3.4	Notification on commencement of service	Still applicable due to Regulation 6(1) of Authorisation Regulations - Duty of ComReg to maintain register of notifications
3.5	Transitional arrangements	Provision in Article 22 of Authorisation Regulations
3.6	Cooperation with authorised officers	Still applicable- Section 39 of 2002 Act
4	Enforcement and amendment	
4.1	Amendment to conditions	Still applicable - Clause 3.1 of General Authorisation ; Regulation 15 of Authorisation Regulations
4.2 – 4.6	Serving notice, correcting omissions, imposing sanctions	Still applicable - Clause 3.2 of General Authorisation ; Regulations 16, 23 & 24 of Authorisation Regulations
4.7	Shortening term of licence	No longer applicable as there is no limit on duration of general authorisation
4.8	Suspension or revocation licence	Still applicable – Suspension or withdrawal of authorisation addressed by Clause 3.2 of General Authorisation ; Regulation 17 of Authorisation Regulations
5	Application and activation of additional conditions	Still applicable but not as condition of General Authorisation . Separation of conditions of a General Authorisation and SMP conditions
6	Public Service Conditions	
6.1	Publication of standard terms and conditions	Still applicable - Clause 18.1 of General Authorisation
6.2	Accuracy of billing systems	Still applicable - Clause 18.1 of General Authorisation
6.3	Ability to intercept messages	Not applicable - no longer a condition; national legislation obligation
6.4	Safeguards on privacy	Still applicable - Clause 17/19 of General Authorisation
6.5	Bar on connection on unauthorised equipment	Still applicable - Clause 9/11 of General Authorisation ; Regulation 29 of Framework Regulations
6.6	Contributions to USO fund	Still applicable - Clause 12.1 of General Authorisation
6.7	Access to emergency services and provisions during times of emergency	Still applicable - Clause 7.1 of General Authorisation
6.8	Compliance with directions aimed at protecting user interests	Still applicable - Clause 18.1 of General Authorisation

Condition	Provision	Basis under New Framework
6.9	Code of practice for resolving disputes	Still applicable - Regulation 28 of USO Regulations
6.10	Directory information services	Still applicable - Clause 15.1 of General Authorisation
7	Public pay phones	Still applicable - Regulation 5/18 of USO Regulations
8	Interconnection	Still applicable - Clause 14 of General Authorisation and Access Regulations
9	Trench sharing	Still applicable with modification – now co-location and facility sharing Clause 16.1 of General Authorisation
10	Numbering	Still applicable - Clause 15.1 of General Authorisation - National Numbering Conventions
11	Quality of service	Still applicable - Clause 18.1 of General Authorisation and Regulation 18 of Universal Service Regulations
Parts 3 and 4	SMP conditions	Still applicable but not as a condition of a General Authorisation . Separation of conditions of a General Authorisation and SMP conditions
Part 5	Provisions applying to Fixed Wireless Point to Multipoint Access licensees	Still applicable but not as condition of General Authorisation Separation of condition of a General Authorisation and spectrum rights of use (Wireless Telegraphy Licence)

Appendix 2 Declaration under Regulation 5 of the European Communities (Electronic Communications)(Authorisation) Regulations, 2003 (S.I. 306 of 2003)

To whom it may concern

In accordance with the terms of Regulation 5 of the European Communities (Electronic Communications)(Authorisation) Regulations, 2003, the Commission for Communications Regulation hereby confirms that the undertaking named below has submitted a notification pursuant to Regulation 4(1)

Authorised Person: _____

and in accordance with that Regulation is deemed to be authorised to provide an electronic communications network or electronic communications service subject to the terms and conditions of a general authorisation issued by the Commission for Communications Regulation.

An Authorised Person may:

- (a) provide the electronic communications networks or services as described in the notification and which is recorded in the public register maintained for that purpose by the Commission for Communications Regulation,
- (b) apply for a consent under section 53 of the Act of 2002 to commence or carry out road works. Applications for such consent shall be made to the road authority in whose functional area the Authorised Person proposes to carry out the road works.
- (c) apply for a licence under section 254(1) of the Planning and Development Act 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure on, under, over or along a public road. Applications for such a licence shall be made to the planning authority in whose functional area the Authorised Person proposes to establish the infrastructure.

Where an Authorised Person is providing an electronic communications service or network to the public, such Authorised Person has the right to negotiate interconnection with another Authorised Person or another undertaking deemed to be authorised in another Member State. The right to negotiate interconnection is subject to the provisions of the European Communities (Electronic Communications Networks And Services)(Access) Regulations, 2003 and any decisions, determinations, requirements, specifications, notifications and directions issued by the Commission for Communications Regulation from time to time. Such interconnection shall be for the purpose of providing publicly available Electronic Communications Services in order to ensure the provision and interoperability of services.

Issued by _____

Name:

Title/Position:

On behalf of the Commission for Communications Regulation

Date _____