



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Information Requirements pursuant to
Section 13D of the Communications
Regulation Act 2002

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1. Section 13D of the Communications Regulation Act 2002, as amended (the “2002 Act”), empowers the Commission for Communications Regulation (“ComReg”) to require the provision of such written information as ComReg considers necessary to enable it to carry out its functions. Following the commencement of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (the “2023 Act”), the text of section 13D of the 2002 Act has been replaced in its entirety¹. The full text of section 13D and section 13E of the 2002 Act (the latter setting out the civil and criminal enforcement procedures for non-compliance with a section 13D information requirement) is set out in the annex to this Information Notice. This Information Notice replaces the Information Notice dated 6 August 2010 in ComReg Document 10/63, which provided details on 13D information requirements under the previous section 13D text of the 2002 Act.
2. ComReg is empowered pursuant to section 13D(1) of the 2002 Act to require undertakings², persons providing a service in a sector closely related to the provision of electronic communications networks or services or associated facilities, and premium rate service providers, to provide it with such written information as ComReg considers necessary to enable it to carry out its functions³.
3. The amendment to the 2002 Act now also provides ComReg with a new power pursuant to section 13(D)(2), that is, to include in any information requirement a requirement that the undertaking or person concerned gather together, generate, or obtain information for the purposes of providing it to ComReg, pursuant to that requirement.
4. ComReg relies upon information provided by undertakings and persons pursuant to section 13D(1) of the Act to enable it to carry out its functions. Failure to comply in full with such information requirements can therefore impede ComReg in the exercise of its functions and can have wide-ranging negative impacts on the telecommunications industry and, more generally, on consumers. For these reasons, where there is non-compliance with a section 13D(1) information requirement, ComReg will take enforcement action, including issuing either civil or criminal enforcement proceedings, as it considers appropriate.
5. An undertaking or person that: (i) fails to comply with a section 13D(1) information requirement within the period specified or within such extended time period as

¹ See Section 122 of the 2023 Act.

² The 2002 Act defines an ‘undertaking’ as a provider of electronic communications networks or services or associated facilities.

³ ComReg is also empowered to request information from undertakings under Section 13D(1) to comply with a requirement made to it by the Minister under Section 13B of the 2002 Act.

ComReg allows; or (ii) in purporting to comply with such a requirement, knowingly or grossly negligently provides to ComReg misleading, erroneous or incomplete information, commits an offence and is liable on summary conviction to a class A fine.

6. Where one of the offences described in the preceding paragraph is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other officer of such an undertaking, then that person may also be the subject of a separate prosecution⁴.
7. ComReg may initiate summary criminal proceedings where an undertaking or person fails to comply with a section 13D(1) requirement⁵. Alternatively, ComReg may apply to the High Court for an order compelling compliance with the information requirement⁶.
8. ComReg may also, at its own discretion, issue a notice of intention to prosecute where it believes on reasonable grounds that an undertaking (or person) has committed an offence by failing to comply with a section 13D(1) information requirement⁷. Such a notice provides that if within 21 days the non-compliant undertaking/person responds to the section 13D(1) requirement to the satisfaction of ComReg, and pays €1,500 to ComReg, the undertaking/person will not be prosecuted for the offence.
9. Should any undertaking or person have any query or concern regarding a particular section 13D(1) information requirement, ComReg recommends that it contact the person who issued the requirement⁸ at the earliest opportunity and in any case before the expiry of the period for responding to the requirement.

⁴ Section 42 of the 2002 Act.

⁵ Section 43 of the 2002 Act.

⁶ Section 13E of the 2002 Act.

⁷ Section 44(1) of the 2002 Act.

⁸ Or such other person as may be identified in the information requirement as the point of contact.

Annex 1: Section 13D and 13E of the 2002 Act

Power of the Commission for Communications Regulation to obtain information

Section 13D

(1) The Commission may at any time, by notice in writing, require-

- (a) an undertaking,
- (b) a person providing a service in a sector closely related to that of the provision of electronic communications networks or services or associated facilities, or
- (c) a premium rate service provider,

to provide it with such written information as it considers necessary to enable it to carry out its functions or to comply with a requirement made to it by the Minister under section 13B.

(2) A requirement by the Commission under subsection (1) may include a requirement that the undertaking or person concerned gather together, generate or obtain information for the purposes of providing it pursuant to that requirement.

(3) Any information provided to the Commission in accordance with subsection (1) may be used by the Commission to enable it to carry out any of its functions.

(4) An undertaking or person referred to in subsection (1) that-

- (a) fails to comply with a requirement made under subsection (1) within the period specified in the notice or within such extended period as the Commission allows, or
- (b) in purporting to comply with such a requirement, knowingly or grossly negligently provides misleading, erroneous or incomplete information to the Commission,

commits an offence and is liable on summary conviction to a class A fine.

(5) In proceedings for an offence involving a failure by an undertaking or a person

referred to in subsection (1) to comply with a requirement made under subsection (1), it is a defence if the undertaking or person establishes that-

- (a) the undertaking or person did not know and could not reasonably be expected to know, ascertain or obtain the required information, or
- (b) the disclosure of the information was prohibited by a law of the State.

Alternative procedure for enforcement of Section 13C⁹ or 13D

Section 13E

- (1) As an alternative to bringing a prosecution for an offence against section 13C or 13D, the Minister or the Commission may apply to the High Court to make a compliance order under subsection (4). Such an application is to be by motion.
- (2) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the undertaking concerned. On being served with such a copy, the undertaking becomes the respondent to the application.
- (3) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under subsection (1). The Court may not refuse interim or interlocutory relief merely because the Minister or Commission may not suffer damage if relief were not granted pending determination of the application.
- (4) On the hearing of an application made under subsection (1), the High Court may make an order requiring the undertaking to comply with the relevant section or may refuse the application.
- (5) If the High Court makes an order under subsection (4), it may make such ancillary orders as it considers appropriate.

⁹ Section 13C of the 2002 Act empowers the Minister to obtain information from an undertaking to enable the Minister formulate policies and plans to deal with emergencies and network security issues as provided for in Section 13A of the 2002 Act.