

Provisions in Contracts - State of Compliance with Regulation 17 of the Universal Service and Users' Rights Regulations



Commission for  
**Communications Regulation**

Information Notice

Provisions in Contracts

State of Compliance with Regulation 17 of the  
Universal Service and Users' Rights Regulations

Document No:	07/49
Date:	27th July 2007

## Contents

1	Introduction .....	2
2	Relevant Statutory Requirements .....	4
2.1	REQUIREMENT ON SERVICE PROVIDERS .....	4
2.2	OTHER AUTHORITIES .....	4
2.3	COMREG COMPLIANCE MONITORING .....	5
3	ComReg Investigation and Findings .....	6
3.1	REVIEW OF STANDARD CONSUMER CONTRACTS .....	6
3.2	OVERALL FINDINGS .....	7
4	Next Steps .....	9

## 1 Introduction

The Commission for Communications Regulation (ComReg) is the statutory body responsible for the regulation of the electronic communications sector in Ireland. One of its functions is to monitor compliance by providers of electronic communication services with statutory requirements set out in various legislative provisions. While growing competition is driving improvements in the delivery of services to end users, there remains a need to ensure that a minimum level of standards is provided by all service providers. Section 12 (2) (c) of the Communications Regulation Act, 2002 ("the 2002 Act") states that a particular measure which ComReg shall take is to promote the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services.

The regulatory framework, established by EU Directives in 2002, places a high degree of importance on consumer/end-user rights. Central to consumer rights is transparency regarding the supply of services. This covers prices and tariffs, information on the quality of services, and the terms and conditions under which services will be supplied. The provision of clear and unambiguous contract terms allows subscribers to understand clearly the nature of the service provider's duties to the end-users. It also informs subscribers of the scope and nature of obligations which the subscriber is committed to by entering into a contract. Having such information will facilitate the resolution of disputes by enabling end-users to directly enforce their contractual rights with their service provider.

The EU Directives, as transposed, make it mandatory that undertakings providing connection or access to the public telephone network shall do so in accordance with a contract. It also sets out seven specific areas that must be addressed in such a contract. Finally, the Directive requires that where a contract is agreed for services other than connection or access to the public telephone network, the specific areas must also be addressed. The requirements regarding contracts was transposed by Regulation 17 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users Rights) Regulations of the 2003 Regulations ("the 2003 Regulations").

In 2003, ComReg issued guidelines (Document No: 03/129) in relation to the minimum level of information to be contained in contracts in order to assist undertakings to comply with their obligations under Regulation 17. Those guidelines were intended to assist service providers in complying with the statutory requirements. The document also drew attention to the requirements of other statutory requirements arising from consumer legislation. Since then there have been considerable developments in the field of consumer legislation, not least with the enactment of the Consumer Protection Act 2007.

ComReg thus has the duty to monitor compliance by service providers with the requirements of regulations. In order to perform this function, ComReg has reviewed consumer contracts to establish the level of compliance with Regulation 17 of the 2003 Regulations. This document presents an overview of compliance with mandatory elements of contracts. Overall, the level of compliance gives rise to concern and ComReg will be contacting all service providers setting out their areas of non-compliance, stressing the areas where consumers are most likely to be negatively affected. ComReg will conduct a follow up exercise in the first quarter of 2008 to ensure compliance has improved.

## 2 Relevant Statutory Requirements

### 2.1 Requirement on Service Providers

The requirements of Regulation 17 of the 2003 Regulations are:

1. An undertaking that provides to end-users (i) connection, (ii) access, (iii) both connection and access to the public telephone network shall do so in accordance with a contract.

2. A contract must specify the following minimum level of information:

**(a) The identity and address of the supplier,**

**(b) Services provided, the service quality levels offered, as well as the time for the initial connection,**

**(c) The types of maintenance service offered,**

**(d) Particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained,**

**(e) The duration of the contract, conditions for renewal and termination of services of the contract,**

**(f) Any compensation and refund arrangements which apply if contracted service quality levels are not met, and**

**(g) The method of initiating procedures for settlement of disputes in accordance with Regulation 28.**

3. Where a contract is agreed between an end-user and a provider of electronic communication services, other than one providing (i) connection, (ii) access, (iii) both to the public telephone network, such a contract must include the information specified in point 2 above.

It is important to note that these requirements are mandatory in nature. They cannot be contracted out of by a service provider.

### 2.2 Other Authorities

In addition, consumers should be aware that other authorities in Ireland have requirements in the area of consumer contracts, for example, the National Consumer Agency in regard to unfair terms and conditions in consumer contracts.

### 2.3 ComReg Compliance Monitoring

ComReg is required under Regulation 32 of the 2003 Regulations to monitor compliance with the Regulations including Regulation 17. It should also be noted that section 10 (1)(c) of the 2002 Act specifies that one of the functions of ComReg is “to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services ...”.

### 3 ComReg Investigation and Findings

ComReg directed all service providers of publicly available electronic communication services to supply all standard contract documentation. 74 contracts were reviewed to establish the level of compliance with the statutory obligations.

#### 3.1 Review of standard consumer contracts

ComReg's review of the contracts identified the following:

**(a) The identity and address of supplier**

Of the contracts reviewed, all provided the identity of the supplier. However 23% did not indicate a specific postal address. The effect of this is to leave the subscriber uncertain where he/she should send a written complaint, or where a notice should be served in the event of legal proceedings. By contrast, the service provider has full details of the postal address of the consumer.

**(b) Service provided and service quality offered**

77% of contracts provided clear information relating to the type of service to be provided but 70% of contracts did not specify the service quality offered. On these two issues, the absence of clear information can lead to disputes in which the end-user is at a disadvantage.

**(c) The time for initial connection**

47% of contracts indicated a timescale for the initial connection and/or commencement of service.

**(d) The type of maintenance service offered**

Only 30% specified the type of maintenance service which is available.

**(e) Particulars of prices and tariffs**

57% provided some information on the prices and tariffs for the service.

**(f) Information by which up to date information on all applicable tariffs and maintenance charges may be obtained**

49% specified where tariff information could be obtained.

**(g) The duration of contract**

The length of the contract was stipulated in 65% of the contracts reviewed.

**(h) The conditions of renewal of contract**

62% did not explain the conditions for the renewal of the contract.

**(i) The conditions of termination of contract**

Our investigation revealed that 73% explained the conditions of termination, including the notice period required, and any penalties which might be incurred by the consumer.

**(j) Any compensation and refund arrangements which apply if contracted service quality levels are not met**

Only 19% of contracts provided information in relation to compensation/refund arrangements for the consumer.

**(k) Method of initiating procedures for settlement of disputes in accordance with Regulation 28**

58% referred to a consumer complaint process within the contract and 53% had a Code of Practice for Complaint Handling.

### 3.2 Overall Findings

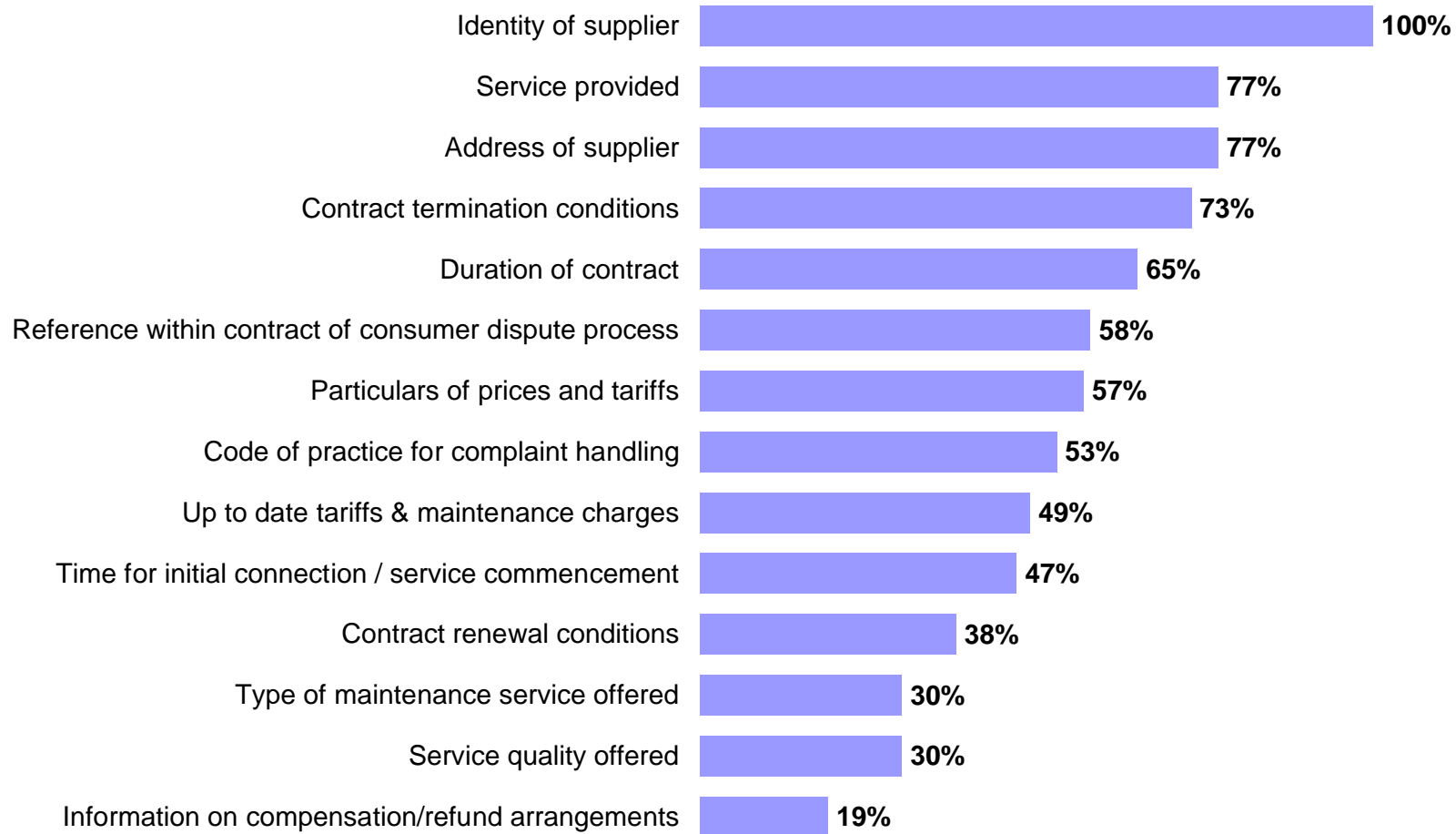
No service provider appeared to be fully compliant with the requirements of Regulation 17 of the 2003 Regulations. It should be stressed that in many cases, this may not have a material effect on end-user interests e.g. while a postal address may not be specified in a contract document, it is available to a consumer by other means – Code of Practice for Complaint Handling, Companies Registration Office, etc. However such an approach displays a lack of transparency by service providers which runs counter to the intention of the Regulatory Framework.

A further finding of the review was that a significant number of contracts are written in a fashion that is particularly difficult to read or to understand. While there is no statutory requirement in this regard, ComReg would urge all service providers to review the manner in which contracts are presented. At minimum, we would wish to see some effort taken regarding layout, font size, the use of headings, effective dates for the specific version of a contract and in particular contract version numbers.



### Compliance with Statutory Requirements

#### Contract information supplied



#### 4 Next Steps

ComReg will notify individual service providers in relation to the matters that we believe they have not adequately addressed in their consumer contracts. Service providers will be provided with a period of 3 months to remedy areas of non-compliance or state their view on ComReg's findings in their particular case. Following the 3 month period, ComReg will review responses to the notifications and assess action taken to remedy non-compliance. In this assessment, ComReg will focus on the areas that it believes may be more likely to negatively affect consumer welfare.

ComReg anticipates that a full review of all contracts will be completed during Quarter 1, 2008 when ComReg will publish a full report and consider all necessary and appropriate enforcement action to ensure compliance. Such enforcement action may be civil or in the alternative, criminal, as provided for by the 2003 Regulations, as amended by the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007.