



Commission for
Communications Regulation

Briefing Note

Transition arrangements for the new Regulatory Framework for Electronic Communications – July 2003

Document No:	03/91
Date:	25 July 2003

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The new framework has been transposed into Irish law by means of a series of regulations made by the Minister for Communications, Marine and Natural Resources on 21 July 2003.

A number of measures implementing the requirements of the regulations are being issued by ComReg today, 25 July 2003. These cover:-

- **Authorisations** - Text of General Authorisation Conditions (03/81); Notification Form (03/82); Guidelines to General Authorisations (03/83); Wireless Telegraphy Licences – future applicability of licence conditions (03/84); Response to a Consultation on arrangements for General Authorisations (03/85) and Exemption from notification requirement (03/90)
- **USO** – designation, and framework for scope, decision notice D17/03 in (03/87)
- **Users' Rights** - outline framework (03/86)
- **Dispute Resolution Procedures** – response to Consultation (03/89) and Decision D18/03
- **Spectrum Rights of use** in new WT Regulations – for 3G (S.I. 340 of 2003) FWA (S.I. 338 of 2003) and GSM (S.I. 339 of 2003) updated for new framework
- **Levy** regulation (S.I. 346 of 2003) and guidance notes (03/88)

In addition, a number of Information Notices were published earlier on the new regime to explain Numbering provisions (03/05) and those concerning Access and Interconnection (03/62).

USO and Users' Rights

Under both the former and the new regime, *eircom* has been designated as USO provider.

A framework for detailing the scope of the USO is published today in document 03/87. All of the existing obligations are being maintained relating to the provision of telephone lines, payphones and directory services and some voluntary arrangements, in relation to disabled persons for example, have been codified and published as USO.

In relation to users' rights, all of the former provisions in the telecoms licences regarding publication of terms and conditions are carried forward into the new regime. The Codes of Practice for complaint handling and arrangements for quality

of service reporting are maintained and enhanced in the new framework, including the development of customer guarantee schemes by operators.

The new arrangements set out the overall framework, and following further analysis and discussion, the detail of both the USO and Users' Rights will be developed over the coming months.

Authorisations

Under the new regime, general/basic telecoms licences will no longer be required. They are being replaced by Authorisations. Operators who are or want to offer services to the public will simply have to notify ComReg in accordance with the process announced today

Under the new regulations, existing telecommunications operators and also other network providers who were previously licensed are now deemed to be authorised from 25 July 2003 in advance of making a statutory notification. They are however required to submit a notification. Operators have until 31 August 2003 to do this. ComReg will contact the affected licensees directly.

Appendix 1 compares the status of the conditions of a General Telecommunications Licence under the new arrangements. Some conditions are covered in different ways in the new framework; for example obligations which may be imposed in respect of Significant Market Power (SMP) are dealt with in the regulations rather than in the Authorisation. Provision has been made for the maintenance of existing obligations until these are either changed, cease or new obligations are imposed under the new framework as described below.

In anticipation of the new regime, ComReg early this year started the work on data gathering and **market analysis** in respect of communications markets and will be concluding this work over the coming months. It will be consulting nationally and also with the European Commission and the European Regulators Group on its conclusions, and determining what remedies, if any, may be appropriate going forward.

Enforcement provisions relating to telecommunications licences in national law no longer apply from 25 July 2003, but provision is made for the continuation of proceedings already underway. New provisions on enforcement under the new framework provide for fines of up to €3,000. The regulations provide a new mechanism enabling ComReg to apply to the High Court for an order requiring compliance and payment of a financial penalty in respect of breaches of regulatory law.

Numbering Rights of Use were covered in the Information Note 03/05. The procedures which are currently in place for the allocation of numbering resources will continue to apply subject to the removal of the condition that an applicant be the holder of a telecommunications licence. From 25 July 2003 the grant of number rights of use will be subject to the applicant having made a notification in connection

with a General Authorisation or is otherwise deemed to be authorised under the Authorisation Regulations.

Dispute Resolution Procedures – the arrangements operated by ComReg have been adjusted to take account of the new regime, in particular the period for resolution has been reduced to 4 months.

Spectrum Rights of Use

Under the old regime, spectrum use was provided for under the Wireless Telegraphy Act, 1926, the Broadcasting Act, 1960 and the Radio and Television Act, 1988. The EU Directives operate on the basis of ‘spectrum rights of use’ and some adaptations of the WT Act regime have been required to deal with this. They relate mainly to the provision of information, amendment of licence conditions, enforcement, and customer care in relation to broadcasting distribution.

The regulations concerning the GSM, 3G and national FWPMA licences have been revised to bring them into line with the new regime. New MMDS regulations will be prepared following consideration of responses to consultation on the current use of the 2500-2690 MHz band (03/70) i.e. the band used by MMDS operators to provide multi-channel TV services. The closing date for the consultation is 1 August 2003.

Guidelines have been issued (03/84), which detail changes to the applicability of the current licence conditions for other broadcasting and radio licence types, under the new Authorisation Regulations issued by the Department of Communications, Marine and Natural Resources.

Administrative Levy/Spectrum Fees

Under the old regime there were separate legal bases and fee regimes for telecoms on the one hand and broadcasting distribution on the other. There were fees/levies for administrative purposes and separate spectrum fees.

Under the new regime, there will be no change in the levy of 0.2% for telecommunications operators, but small operators with less than €500,000 per annum turnover, will now be exempt. These arrangements are set out in the Levy Order issued today (S.I no 346 of 2003), together with the guidance notes (03/88). There is not at this point any change in the spectrum fee regime.

For broadcasters, new arrangements were outlined in the response to consultation on fees (03/46). In light of anticipated changes to the framework for administrative fees, these were further refined in (03/78), issued on 18 July 2003. Substantial replies have been received to this last consultation and it has been decided to defer making an order on these matters until a fuller consideration can be given to the replies

received late on 23 July 2003. Such new arrangements as may be determined will apply from 25 July 2003.

Interconnect and Access

As outlined in the Information Notice (03/62), the regime will remain broadly the same as at present.

This note is issued for general information purposes only and does not engage the responsibility of the Commissioners or of ComReg. Interested parties should consult the relevant Directives, regulations, decisions etc.

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	

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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

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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

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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

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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)