



DÁIL ÉIREANN

AN BILLE UM RIALÁIL CUMARSÁIDE (LEASÚ) 2007 COMMUNICATIONS REGULATION (AMENDMENT) BILL 2007

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM RIALÁIL CUMARSÁIDE (LEASÚ) 2007 —ROGHCHOISTE

COMMUNICATIONS REGULATION (AMENDMENT) BILL 2007 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 7, line 29, after “2002” to insert “or as amended herein”.

—Bernard Durkan.

SECTION 3

2. In page 8, line 15, to delete “20” and substitute “10”.

—Bernard Durkan.

3. In page 8, line 28, after “undertaking” to insert “unless specifically referred”.

—Bernard Durkan.

4. In page 8, line 32, after “person” to insert “or group”.

—Bernard Durkan.

5. In page 9, line 8, after “Minister” to insert “and approved by the Oireachtas”.

—Bernard Durkan.

6. In page 9, line 25, after “Act” to insert “subject to Oireachtas approval”.

—Bernard Durkan.

7. In page 9, line 29, after “Act” to insert “subject to Oireachtas approval”.

—Bernard Durkan.

SECTION 4

8. In page 9, subsection (3), line 37, after “authority” to insert “after approval by the Oireachtas”.

—Bernard Durkan.

SECTION 5

9. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to invigilate the volumes and revenues of international and national mobile telecom services including all termination rates”;

—Thomas Broughan.

[SECTION 5]

10. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to ensure that undertakings provide at least thirty days prior notice for the withdrawal of any electronic communications services or any electronic communications product to an end user”;

—Thomas Broughan.

11. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to regulate the content, promotion and pricing information for all premium rate telecom services”;

—Thomas Broughan.

12. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to regulate a universal service obligation for all broadband undertakings”;

—Thomas Broughan.

13. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to ensure that the national broadband network is fully accessible to third party operators”;

—Thomas Broughan.

14. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to ensure that the national communications network is maintained to the highest technical current standards in every sector of the network”;

—Thomas Broughan.

15. In page 10, between lines 22 and 23, to insert the following:

“(d) by inserting the following after subsection (1)(e):

“(f) to intervene directly on behalf of end users where service contracts or the universal service obligation have been broken and to ensure compliance by undertakings with the terms of those contracts”;

—Thomas Broughan.

[SECTION 6]

SECTION 6

16. In page 10, before section 6, to insert the following new section:

“Additional function of Commission regarding performance targets in provision of landline services.

6.—It shall be a function of the Commission to ensure that any telecommunications service provider whose business includes the provision of landline telephone service shall provide such a service within 3 months of the receipt by that provider of a customer order.”.

—Thomas Broughan.

17. In page 10, line 33, after “information” to insert “and make provision by way of directive”.

—Bernard Durkan.

18. In page 10, line 45, after “State” to insert the following:

“including the ongoing financial investment in the infrastructure”.

—Bernard Durkan.

19. In page 11, between lines 2 and 3, to insert the following:

“(c) the technical and financial performance of the Metropolitan Area Networks”.

—Thomas Broughan.

20. In page 11, between lines 2 and 3, to insert the following:

“(d) the volumes and revenues of international and national mobile telecom services including their termination rates”.

—Thomas Broughan.

21. In page 11, between lines 2 and 3, to insert the following:

“(c) the level of investment required to provide the level of service expected.”.

—Bernard Durkan.

22. In page 11, line 12, after “network” to insert “and the necessity for regular upgrade”.

—Bernard Durkan.

23. In page 11, line 17, after “to” to insert “the adequacy of the”.

—Bernard Durkan.

24. In page 11, between lines 18 and 19, to insert the following:

“(d) the financial stability or credibility of the undertaking with particular reference to future requirements in respect of investment in modern infrastructure.”.

—Bernard Durkan.

25. In page 12, between lines 18 and 19, to insert the following:

“(c) fails to provide at least 24 hours of prior notice for the withdrawal of any electronic communications service or electric communications product to an end user”.

—Thomas Broughan.

[SECTION 6]

26. In page 13, line 8, after “application” to insert the following:

“provided the interests of the end user or customer are acknowledged”.

—Bernard Durkan.

SECTION 7

27. In page 13, line 19, after “disclosure” to insert “, as defined in the Whistleblowers Act,”.

—Bernard Durkan.

28. In page 13, line 23, after “so” to insert the following:

“unless it is proven that irreparable damage has been done to the undertaking by false, groundless or malicious allegations”.

—Bernard Durkan.

29. In page 13, line 31, after “facility” to insert the following:

“where a whistleblower believes on reasonable grounds that an undertaking, an associate of an undertaking or an association of undertakings are involved in anti-competitive practices or collusion”.

—Thomas Broughan.

30. In page 13, line 47, after “Síochána)” to insert the following:

“provided that such information, if sensitive, does not become public knowledge until its veracity has been established”.

—Bernard Durkan.

31. In page 14, line 5, before “to” to insert “, as defined in the Whistleblowers Act,”.

—Bernard Durkan.

32. In page 14, between lines 9 and 10, to insert the following:

“(5) The Commission may decline to accept or deal with a disclosure of information made to it by a person about the conduct of an undertaking, an associate of an undertaking or an association of undertakings if it is satisfied on reasonable grounds that the information is false or misleading or that the disclosure is frivolous or vexatious.”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádurtha.

33. In page 14, line 14, after “disclosure” to insert “, as defined in the Whistleblowers Act,”.

—Bernard Durkan.

SECTION 9

34. In page 15, line 2, to delete “July” and substitute “January”.

—Bernard Durkan.

35. In page 15, line 17, after “Minister” to insert the following:

“and lay the plan before the Houses of the Oireachtas for approval”.

—Thomas Broughan.

[SECTION 9]

36. In page 15, line 17, after “Minister” to insert “who shall inform the Oireachtas”.

—Bernard Durkan.

SECTION 10

37. In page 17, to delete lines 1 to 5.

—Thomas Broughan.

38. In page 17, line 10, after “accordingly” to insert the following:

“having due regard to the legal entitlements of all those affected”.

—Bernard Durkan.

39. In page 17, line 26, after “staff” to insert the following:

“, or

- (c) a barrister or solicitor or other person who is representing a person, group or body who may be affected by the evidence given”.

—Bernard Durkan.

40. In page 18, line 20, after “penalty” to insert the following:

“or to inadvertently give credence or substance to an allegation of malfeasance”.

—Bernard Durkan.

SECTION 11

41. In page 18, before section 11, to insert the following new section:

“Dissolution of the Electronic Communications Appeals Panel.

- 11.—The Electronic Communications Appeals Panel is dissolved.”.

—Thomas Broughan.

42. In page 19, to delete lines 8 to 15 and substitute the following:

“(2) Subsection (1) does not apply to a prosecution for—

- (a) an offence under section 53(2) of this Act,
(b) an offence under the European Communities (Electronic Communications Networks and Services) (Universal Services and Users’ Rights) Regulations (S.I. No. 308 of 2003), or
(c) an offence under the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations (S.I. No. 535 of 2003).”.

—An tAire Cumarsáide, Mara agus Acmhainní Náidúrtha.

SECTION 12

43. In page 19, line 32, after “offence” to insert the following:

“provided that failure to prosecute does not militate against the legal entitlements of other persons, groups, service providers or undertakings”.

—Bernard Durkan.

[SECTION 13]

SECTION 13

44. In page 20, line 1, to delete “an oral or” and substitute “a”.
—Bernard Durkan.
45. In page 20, line 34, after “contravening” to insert “subsection (1) of”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
46. In page 20, line 35, to delete “that section” and substitute “that subsection”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
47. In page 20, line 36, to delete “that section” and substitute “that subsection”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
48. In page 21, line 4, after “application” to insert “provided that the body of evidence is sufficient”.
—Bernard Durkan.
49. In page 21, line 21, after “respondent” to insert the following:
“subject to good practice and compliance with legal requirements”.
—Bernard Durkan.
50. In page 21, line 30, after “Commission” to insert the following:
“and should be based on the seriousness of the circumstances surrounding the case”.
—Bernard Durkan.
51. In page 21, line 36, after “consumers” to insert the following:
“and having regard to independent assessment of its impact”.
—Bernard Durkan.

SECTION 14

52. In page 22, to delete lines 14 and 15.
—Thomas Broughan.
53. In page 22, line 23, after “relates” to insert the following:
“and provided he or she seeks prior approval and gives advance notice to the Oireachtas”.
—Bernard Durkan.
54. In page 22, line 29, after “may,” to insert “with prior Oireachtas approval,”.
—Bernard Durkan.
55. In page 23, line 1, after “may” to insert “, with the prior approval of the Oireachtas,”.
—Bernard Durkan.
56. In page 23, line 9, after “facility” to insert the following:
“, the nature, quality or standard of the material transmitted if likely to be transmitted with particular reference to preventing internet grooming, child pornography”.
—Bernard Durkan.
57. In page 23, line 32, after “the” to insert “continuation or prolongation of the”.
—Bernard Durkan.

[SECTION 14]

58. In page 23, lines 41 to 48, to delete all words from and including “, not” in line 41 down to and including “or” in line 48 and substitute the following:

“shall be of sufficient severity to end the act or practice and prevent repetition”.

—Bernard Durkan.

59. In page 23, to delete line 43.

—Thomas Broughan.

60. In page 23, to delete lines 44 to 47 and substitute the following:

“(ii) 10 per cent of turnover of the body corporate,”.

—Thomas Broughan.

61. In page 24, line 2, after “person” to insert “, group or association of persons”.

—Bernard Durkan.

62. In page 24, between lines 3 and 4, to insert the following:

“(7) If the Minister considers it necessary to do so for the purpose of giving full effect to a provision of the treaties governing the European Communities, or to an act, or provision of an act, adopted by an institution of those Communities, the Minister may, in regulations under subsection (1), (2) or (3), provide—

- (a) for the High Court, on application by the Commission or some other person specified in the regulations, to make—

(i) an order requiring a specified person, or a person belonging to a specified class, to comply with an obligation imposed by or under the regulations, or

(ii) an order restraining such a person from continuing to contravene a prohibition or restriction specified in or under the regulations,

and

- (b) for the High Court, on being satisfied that such a person has failed to comply with such an obligation, or has contravened such a prohibition or restriction, to order the person to pay a financial penalty of such amount as the Court considers appropriate, having regard to the circumstances of the failure to comply or contravention, including—

(i) the duration of the failure to comply or the contravention,

(ii) the effect of the failure to comply or contravention on consumers or users of the service or product provided or supplied by the person and on the person’s competitors,

(iii) the submissions of the Commission as to the appropriate amount of the penalty to be imposed, and

(iv) any excuse or explanation given by the person with respect to the failure to comply or contravention.”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

63. In page 24, line 4, to delete “(7)” and substitute “(8)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

[SECTION 14]

64. In page 24, line 9, after “may,” to insert “with the prior approval of the Oireachtas”.

—Bernard Durkan.

65. In page 24, line 31, to delete “(8)” and substitute “(9)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

66. In page 24, line 35, to delete “(9)” and substitute “(10)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

SECTION 16

67. In page 30, between lines 30 and 31, to insert the following:

“58D—(1) A payment regime will be introduced with immediate effect which will oblige all undertakings who forward calls to the current ECAS operator to make a payment to the current ECAS provider.

(2) This payment arrangement will remain in force until any new ECAS undertaking enters into a contract with the State for the future provision of the ECAS service.

(3) During this interim period, the per call fee payable to the current ECAS provider shall be specified by the Commission.”

—Thomas Broughan.

SECTION 18

68. In page 35, between lines 17 and 18, to insert the following:

“(44) European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002);”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

69. In page 35, line 18, to delete “(44)” and substitute “(45)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

70. In page 35, line 20, to delete “(45)” and substitute “(46)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

71. In page 35, line 22, to delete “(46)” and substitute “(47)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

72. In page 35, line 25, to delete “(47)” and substitute “(48)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

73. In page 35, line 28, to delete “(48)” and substitute “(49)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

74. In page 35, line 31, to delete “(49)” and substitute “(50)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

75. In page 35, line 34, to delete “(50)” and substitute “(51)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

76. In page 35, line 36, to delete “(51)” and substitute “(52)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

[SECTION 18]

77. In page 35, line 39, to delete “(52)” and substitute “(53)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
78. In page 35, line 41, to delete “(53)” and substitute “(54)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
79. In page 35, line 44, to delete “(54)” and substitute “(55)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
80. In page 36, line 1, to delete “(55)” and substitute “(56)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
81. In page 36, line 3, to delete “(56)” and substitute “(57)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
82. In page 36, line 6, to delete “(57)” and substitute “(58)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
83. In page 36, line 8, to delete “(58)” and substitute “(59)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
84. In page 36, line 10, to delete “(59)” and substitute “(60)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
85. In page 36, line 13, to delete “(60)” and substitute “(61)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
86. In page 36, line 16, to delete “(61)” and substitute “(62)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
87. In page 36, line 18, to delete “(62)” and substitute “(63)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
88. In page 36, line 20, to delete “(63)” and substitute “(64)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
89. In page 36, line 23, to delete “(64)” and substitute “(65)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
90. In page 36, line 25, to delete “(65)” and substitute “(66)”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.

SECTION 20

91. In page 37, line 10, to delete “in the State”.
—An tAire Cumarsáide, Mara agus Acmhainní Nádúrtha.
92. In page 37, between lines 23 and 24, to insert the following:

“(b) ensure that the ‘.ie’ domain name is maintained at the most price competitive level as practicable;”.

—Thomas Broughan.

[SECTION 30]

SECTION 30

93. In page 42, between lines 12 and 13, to insert the following:

“47B—In relation to an investigation carried out by the Commission or of a complaint made to it by any person regarding an agreement, decision or practice of a kind specified in Section 4 or an occurrence of the abuse of the kind specified in Section 5 involving the provision of an electronic communications service or an electronic communications network or associated facilities the Commission shall take the initiative to investigate such a complaint.”

—Thomas Broughan.

94. In page 43, line 9, after “Part 2” to insert “(section 4(3) excepted)”.

—An tAire Cumarsáide, Mara agus Acmhainní Nádurtha.

95. In page 44, between lines 26 and 27, to insert the following:

“(5) A cooperation agreement and any variation to it shall be laid before both Houses of the Oireachtas.”

—Thomas Broughan.

SCHEDULE 1

96. In page 49, between lines 19* and 20*, to insert the following:

		(2) In this section a message sent by electronic mail or text message is deemed to be sent by telephone.
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”
—Thomas Broughan.

[* Note: A printing error has resulted in incorrect line references in page 49 of the Bill. The line reference in this amendment relates to the actual number of lines of text contained in page 49 of the Bill.]

SCHEDULE 2

97. In page 74, to delete lines 16* to 25*.

—An tAire Cumarsáide, Mara agus Acmhainní Nádurtha.

[* Note: A printing error has resulted in incorrect line references in page 74 of the Bill. The line reference in this amendment relates to the actual number of lines of text contained in page 74 of the Bill.]