



DÁIL ÉIREANN

AN BILLE UM RIALÁIL CUMARSÁIDE (SEIRBHÍSÍ ARDRÁTA) 2009 COMMUNICATIONS REGULATION (PREMIUM RATE SERVICES) BILL 2009

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM RIALÁIL CUMARSÁIDE (SEIRBHÍSÍ ARDRÁTA) 2009 —AN TUARASCÁIL

COMMUNICATIONS REGULATION (PREMIUM RATE SERVICES) BILL 2009 —REPORT

Leasuithe Amendments

1. In page 3, between lines 12 and 13, to insert the following:

“PART 1

PRELIMINARY AND GENERAL

Short title,
collective citation
and construction.

1.—(1) This Act may be cited as the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2009.

(2) The Principal Act, the Act of 2007 and this Act may be cited together as the Communications Regulation Acts 2002 to 2009 and shall be read together as one.”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

2. In page 3, between lines 12 and 13, to insert the following:

“Definition.

2.—In this Act “Principal Act” means Communications Regulation Act 2002.”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

3. In page 3, to delete line 13 and substitute the following:

“PART 2

REGULATION OF PREMIUM RATE SERVICES

Definitions (*Part 2*).

1.—In this Part—”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

4. In page 3, between lines 18 and 19, to insert the following:

““end user” has the meaning assigned to it by *section 11(5)*.”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

5. In page 3, between lines 25 and 26, to insert the following:

““Minister” means Minister for Communications, Energy and Natural Resources;”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

6. In page 3, line 29, to delete “(other than a broadcasting service)”.

—Liz McManus, Simon Coveney.

7. In page 4, to delete line 27.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

8. In page 4, between lines 34 and 35, to insert the following:

“Merger of
Commission and
Broadcasting
Authority of Ireland.

2.—(1) The Minister may, by order, if satisfied that it is in the public interest to do so, provide that the Commission shall be merged with the Broadcasting Authority of Ireland.

(2) An order under this section may make such consequential provision as is appropriate in connection with such a merger.”

—Liz McManus.

9. In page 4, to delete lines 35 to 37 and substitute the following:

“Appointed day.

2.—(1) The Minister may appoint a day to be the appointed day for the purposes of this Part and upon which this Part has effect.”

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

10. In page 5, line 14, to delete “section” and substitute “subsection”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

11. In page 5, between lines 46 and 47, to insert the following:

“(2) Where a specified premium rate service is advertised or promoted by means of a broadcasting service, it is the function of the Commission to ensure that the premium rate service provider, whose specified premium rate service is advertised or promoted, complies with the conditions attached to the licence in respect of that premium rate service.”

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

12. In page 6, between lines 29 and 30, to insert the following:

“(e) the potential end users for which the premium rate service is intended,”

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

13. In page 6, between lines 31 and 32, to insert the following:

“(f) the target potential user for the premium rate service”.

—Simon Coveney.

14. In page 7, between lines 31 and 32, to insert the following:

“(11) The Commission may give a direction to a network operator that is necessary or expedient for the performance of the functions of the Commission, and the network operator shall comply with the direction.”

—Liz McManus.

15. In page 7, line 32, to delete “may” and substitute “shall”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

16. In page 7, line 34, after “*section 4*,” to insert the following:

“or the class or type of premium rate services which do not require to be so licenced”.

—Liz McManus.

17. In page 7, between lines 42 and 43, to insert the following:

“(2) It shall be a condition of a licence under *section 4* that—

(a) the premium rate service provider shall ensure that any service of an ongoing nature may be readily terminated by the user at any time, and in the case of a service provided by SMS, the user may terminate the service at any time by sending “stop” in reply to any SMS received,

(b) where a premium rate service provider fails to comply with *paragraph (a)* in any particular case, he or she shall refund the user in accordance with and subject to regulations under *subsection (1)* and shall pay the user compensation in accordance with and subject to such regulations.”

—Liz McManus.

18. In page 8, line 21, after “application” to insert “(which may in cases of urgency be made ex parte)”.

—Liz McManus.

19. In page 8, line 42, after “and” to insert the following:

“may require any network operator to withhold payments from the premium rate service provider concerned, to such extent as are specified by the Commission, and may also”.

—Liz McManus.

20. In page 8, line 43, after “to” to insert the following:

“repay any consumer affected, together with such compensation or other redress as the Commission directs, and to”.

—Liz McManus.

21. In page 8, line 43, after “breach” to insert the following:

“and to refund any charge imposed by the provider on any end user in respect of any premium rate service that is connected with the non-compliance or breach”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

22. In page 9, line 3, to delete “in case of repeated non-compliance, or” and substitute “for reasons stated in the notification, or”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

23. In page 9, line 3, to delete “in case of repeated non-compliance”.

—Simon Coveney.

24. In page 9, line 14, after “may” to insert the following:

“require any network operator to withhold payments from the premium rate service provider concerned, to such extent as are specified by the Commission, and may also”.

—Liz McManus.

25. In page 9, line 30, after “accordingly,” to insert the following:

“the Commission may direct a network operator to cease to carry the premium rate service concerned, and further”.

—Liz McManus.

26. In page 10, line 5, after “licence” to insert “or who infringes the terms of a licence”.

—Liz McManus.

27. In page 10, between lines 26 and 27, to insert the following:

“(d) which is in respect of a service different to that promoted, which involved non-delivery of messages, failure of stop command, no or inadequate price warnings, blank messages or a service incompatible with the handset from which it was requested.”.

—Liz McManus.

28. In page 10, between lines 26 and 27, to insert the following:

“(2) Where a premium rate service provider contravenes *subsection (1)*, the Commission shall establish a speedy mechanism to ensure redress for the consumer.”.

—Liz McManus.

29. In page 10, line 29, to delete “€5,000” and substitute the following:

“€20,000 and shall be obliged to re-emburse any or all end users in full as appropriate under *subsection (1)(a), (b) and (c)*”.

—Simon Coveney.

30. In page 11, lines 36 to 38, to delete all words from and including “such” in line 36 down to and including “relevant” in line 38 and substitute the following:

“premium rate service providers, other interested persons and, as it considers relevant, other regulatory bodies in the State”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

31. In page 12, line 5, after “providers” to insert the following:

“, other interested persons and, as it considers relevant, other regulatory bodies in the State”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

32. In page 12, line 5, after “providers” to insert “and members of the public or user representatives”.

—Simon Coveney.

33. In page 12, lines 24 to 26, to delete all words from and including “such” in line 24 down to and including “relevant” in line 26 and substitute the following:

“premium rate service providers, other interested persons and, as it considers relevant, other regulatory bodies in the State”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

34. In page 14, line 18, to delete “regulatory” and substitute “regulating”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

35. In page 14, line 34, to delete “Act” and substitute “Part”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

36. In page 15, to delete lines 33 to 38.

—Simon Coveney.

37. In page 15, between lines 42 and 43, to insert the following:

“Revocation.

18.—The Telecommunications (Premium Rate Telephone Services) Scheme 1995 (S.I. No. 194 of 1995) is revoked.”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

38. In page 15, between lines 42 and 43, to insert the following:

“PART 3

ELECTRONIC COMMUNICATIONS INFRASTRUCTURE

Amendment of Part 5 of Principal Act—
electronic
communications
infrastructure
roadworks and
sharing.

19.—(1) Section 52 of the Principal Act is amended by—

(a) inserting after the definition of “Act of 2000” the following:

“ ‘authority’ means NRA or a road authority, as the case may be;”,

(b) substituting for the definition of “consent” the following:

“ ‘consent’ means a consent granted by an authority under section 53(3) or, in the case of emergency roadworks, deemed to be granted under section 53(4);”,

(c) inserting after the definition of “land” the following:

“ ‘NRA’ means National Roads Authority;”,

and

(d) by substituting for the definitions of “public road” “road”, “road authority” and “roadworks” the following:

“ ‘public road’ means a national road, regional road or local road;

‘road’, ‘national road’, ‘regional road’ and ‘local road’ have the meanings assigned to them, respectively, by the Roads Act 1993;

‘road authority’ has the meaning assigned to it by section 2 (inserted by section 11 of the Roads Act 2007) of the Roads Act 1993;

‘roadworks’ means the opening of a public road or any act or work that requires or causes the closing of a public road or part of a public road, including the opening or closing of a public road or part of a public road for the purposes of opening ducts, for the purpose of the establishment, extension, replacement, repair, removal or maintenance of works on electronic communications infrastructure.”.

(2) The following section is substituted for section 53 of the Principal Act:

“Opening of public road for establishment of underground electronic communications infrastructure. 53.—(1) A network operator shall not commence or carry out or cause to be commenced or carried out any roadworks unless—

(a) the operator—

(i) has obtained the prior written consent under subsection (3) of—

(I) in the case of a national road, the NRA, or

(II) in the case of any regional or local road, the road authority, in whose functional area the operator proposes to carry out the roadworks,

or

(ii) is deemed to have been granted consent under subsection (4), where the roadworks are emergency roadworks,

or

(b) the network operator or any person engaged by the network operator complies with any conditions contained in the consent.

(2) A network operator or a person engaged by the network operator who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000.

(3) Subject to this section and any regulations under section 56 (2)—

(a) the NRA, following consultation, not exceeding 21 days, with the road authority in whose functional area the national road exists, may grant consent to a network operator, upon application to it by the operator, to carry out roadworks on a national road, or

(b) a road authority may grant consent to a network operator, upon application to it by the operator, to carry out roadworks on a regional road or local road in the functional area of the road authority,

for the purposes of—

(i) establishing underground electronic communications infrastructure and any associated physical infrastructure,

(ii) extending the underground electronic communications network to parts of the road under which electronic communications infrastructure has not previously been placed by that network operator,

(iii) carrying out roadworks on underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure, or

(iv) installing electronic communications infrastructure in ducts, which are the responsibility of an authority, on public roads,

subject to any conditions contained in the consent.

(4) Subject to regulations made in respect of emergency roadworks under section 56(2), a consent shall be deemed to be granted where the proposed roadworks are emergency roadworks, subject to any conditions the authority concerned may decide while the emergency roadworks are in progress or completed. The network operator shall inform the authority concerned as soon as is practicable in advance of the commencement of those roadworks.

(5) A consent may contain conditions. Any conditions contained in a consent—

(a) shall not discriminate unfairly between network operators, and

(b) shall be consistent with the need for the authority to carry out its functions under this Part and under the Roads Acts 1993 to 2007 and the Road Traffic Acts 1961 to 2007.

(6) Where an authority proposes to grant consent to a network operator under subsection (3) or a consent is granted under subsection (4), the consent may contain conditions which, without prejudice to any other conditions it proposes to impose on the network operator, may—

(a) provide that network operators meet any losses, liabilities and costs suffered or incurred by the authority, under contractual arrangements with a third party, where such losses, liabilities and costs arise as a result of any act undertaken by the network operator, under section 53(3) or (4), in relation to electronic communications infrastructure,

(b) where ducts on national roads are provided and made available by an authority to a network operator, provide that the authority shall not be liable to that network operator for any loss or damage howsoever caused to the electronic communications infrastructure in those ducts, which is the property of the network operator except for such loss or damage caused by the wilful act or gross negligence of the authority or its agents acting on its behalf, and

(c) provide that the authority may have representatives present at work sites for the purpose of determining compliance with any conditions imposed in connection with any act undertaken by the network operator, under a consent issued under section 53(3) or (4), in relation to electronic communications infrastructure.

(7) An authority granting consent shall notify the network operator, in writing, of the reason for any conditions contained in the consent.

(8) The NRA, in the case of a national road, following consultation, not exceeding 21 days, with a road authority in whose functional area the national road exists, or a road authority, in the case of regional and local roads in its functional area, may, subject to any regulations under section 56(2), impose charges on network operators—

- (a) for the grant of consents to cover the administrative costs, including costs involved in monitoring compliance with consents, incurred by the authority under this section, and
- (b) for reasonable costs it may incur in making good long term damage to a public road as a result of road openings carried out by the network operator.

(9) The NRA, may in the case of national roads, make a scheme which will allow for the NRA to impose charges for the use of ducts on national roads, which are provided and made available by an authority to a network operator, subject to the approval of the Minister for Transport following consultation with the Minister and the Minister for Finance.

(10) When considering an application for a consent, an authority shall have regard to—

- (a) the existing and potential use and availability of space under the surface of the public road concerned, including—
 - (i) the requirements of the authority in the performance of its functions and responsibilities,
 - (ii) the course and depth of ducts to be laid by the applicant,
 - (iii) the existence of ducts in addition to those which are immediately required by any network operator, and
 - (iv) the existence of duct space in addition to that which is reasonably required by any network operator,
- (b) the safe and efficient operation of the public road,
- (c) road reconstruction, repair and maintenance costs that may arise as a consequence of the application,
- (d) the protection of the environment and of amenities including residential amenities,
- (e) the manner and timing of the reinstatement of the road,
- (f) any scheme adopted under subsection (11), and
- (g) any contractual arrangements which an authority may have with a third party.

(11) The NRA, in the case of national roads, following consultation, not exceeding 60 days, with road authorities, or a road authority, in the case of regional and local roads in its functional area, may formulate and, after public consultation, adopt a scheme setting out its policy regarding—

- (a) the use of underground road capacity, including the rationing of any particular underground spaces below roads,
- (b) conditions (including restrictions and requirements) that may be imposed by it in relation to the grant of consents, either generally or with respect to specific areas or circumstances,
- (c) refusal of consent, either generally or with respect to specific areas or circumstances,
- (d) charges under this Part, and
- (e) emergency roadworks.

(12) The Minister for Transport, in consultation with the Minister, may issue guidelines to be followed by an authority in relation to public consultation regarding a scheme drawn up by it under subsection (11).

(13) An authority shall consult with the Commission before attaching a condition to a consent it proposes to grant requiring the applicant to lay additional ducts.

(14) Where the holder of a consent fails to comply with any condition attached to a consent, the authority which granted the consent may withdraw the consent.

(15) Where an authority proposes—

- (a) to refuse to grant consent,
- (b) to grant consent subject to conditions, or
- (c) to withdraw a consent granted by it,

the authority shall notify the network operator concerned in writing of the proposal and shall include in the notification a statement of the reasons for the proposal and of the right of the network operator to make representations to the authority under subsection (16).

(16) A network operator may, within 21 days of the receipt by the operator of a notification under subsection (15), make representations to the authority concerned in relation to the proposal.

(17) Where an authority—

- (a) after consideration of any representations made to it by a network operator under subsection (16), or

- (b) does not receive representations from the network operator concerned within the period specified in subsection (16),

decides—

- (i) to refuse to grant consent,
- (ii) to grant consent subject to conditions, or
- (iii) to withdraw its consent,

the authority shall, not more than 21 days after the expiration of the period specified in subsection (16), notify the network operator in writing of its decision and shall include in the notification a statement of the reasons for the decision and of the right of the network operator to appeal the decision under subsection (18).

(18) A network operator may, within 28 days of the receipt by the operator of a notification under subsection (17), appeal to the High Court against the decision concerned and the Court may—

- (a) confirm the decision,
- (b) amend the decision, or
- (c) direct the authority to grant the consent or refrain from withdrawing consent, as the case may be.

(19) A network operator shall be responsible for all costs incurred in the reinstatement of a road which the operator has opened for the purpose of—

- (a) the establishment of underground electronic communications infrastructure, or
- (b) maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure,

to a standard satisfactory to the authority concerned.

(20) The requirement to hold a licence under section 254 of the Act of 2000 in respect of subsection (1)(e) of that section does not apply where a network operator has been granted a consent under subsection (3).

(21) A network operator shall, on a request being made by an authority, provide among other things—

- (a) such information as the authority may require in relation to the utilisation of underground electronic communications infrastructure owned or operated by the operator, and
- (b) such access to underground electronic communications infrastructure owned or operated by the operator, as may be necessary to enable the authority to exercise its functions under this section.

(22) An authority may apply to the High Court for an order—

- (a) by way of injunction, to prohibit any non-compliance, or
- (b) by way of *mandamus*, to direct any compliance,

with a requirement of this section or the conditions of consent. The Court may grant such order as it sees fit.

(23) This section is without prejudice to section 101D (inserted by the Dublin Transport Authority (Dissolution) Act 1987) of the Road Traffic Act 1961 (which relates to directions given by local authorities to persons carrying out roadworks).

(24) A summary offence under subsection (2) may be prosecuted by—

- (a) where the offence relates to a national road, the NRA or the road authority in whose functional area the offence is committed, or
- (b) where the offence relates to a regional or local road, the road authority within whose functional area the offence is committed.”.

(3) The following are substituted for sections 55 and 56 of the Principal Act:

“Cost apportionment for electronic communications infrastructure relocation due to road improvements.

55.—(1) Notwithstanding section 254(4) of the Act of 2000 and subject to this section, where an authority undertakes work for the purposes of improving a public road, it shall pay to a network operator all reasonable costs incurred by the operator in the relocation (except in relation to the relocation of ducts as referred to in subsection (2)) of its electronic communications infrastructure and any associated physical infrastructure necessitated by and directly attributable to that work.

(2) Where ducts on national roads, which are provided and made available by an authority for use by network operators, are required to be moved arising from any works undertaken by an authority to improve a national road, then—

- (a) the authority shall only cover the costs of relocating the ducts, necessitated and directly attributable to that work,
- (b) the network operator or network operators using those ducts shall be responsible for any costs incurred by the operator in the relocation of its electronic communications infrastructure in those ducts necessitated by and directly attributable to that work, and
- (c) the NRA shall provide reasonable notice of the roadworks to the network operator concerned.

(3) Where a network operator makes an application for consent under section 53(3), the NRA shall, where it proposes to grant consent to the network operator in respect of the application, inform the network operator of the responsibility imposed on the network operator for relocation costs incurred by the network operator referred to in subsection (2)(b).

(4) Where electronic communications infrastructure and any associated physical infrastructure is replaced or improved by a network operator in the course of relocation due to road improvement, the authority concerned shall pay only the costs directly attributable to work done to electronic communications infrastructure and any associated physical infrastructure as a result of roadworks which would have been incurred if the electronic communications infrastructure and any associated physical infrastructure existing immediately before the road improvement had been relocated.

(5) A network operator shall be responsible to an authority for any costs incurred by the authority where the network operator fails to carry out the relocation of its electronic communications infrastructure in a safe, expeditious and efficient manner.

(6) Where an authority, on an application to it by a network operator to carry out roadworks over, along, on (under section 254 of the Act of 2000) or under (under section 53) a public road, gives the operator notice that the road is due to be improved by the authority within the period of 2 years of the date from which the operator intends to carry out the works, the authority shall not be responsible for the cost of relocating electronic communications infrastructure or anything connected with the works where the road improvement proceeds within that period.

(7) Where a dispute or difference arises between a network operator and an authority in respect of the cost of the relocation of electronic communications infrastructure, the dispute or difference shall be determined by agreed conciliation procedures between both parties or, in default of such agreement, by arbitration under the Arbitration Acts 1954 to 1998.

Regulations and policy of directions to road authorities.

56.—(1) The Minister may, with the consent of the Minister for Transport, for the purposes of section 54(2) and 55, make regulations to establish the basis for the calculation by a network operator of costs reasonably attributable to costs incurred by the network operator as a result of roadworks, and to establish an objective measure of works to be deemed to be improvements to electronic communications infrastructure for the purposes of this Part.

(2) The Minister for Transport may, with the consent of the Minister, for the purposes of section 53 make regulations, in relation to—

(a) any conditions, restrictions or requirements to be made in a consent,

(b) the imposition of charges by authorities,

(c) anything to be contained in schemes under section 53(11), and

(d) emergency roadworks.

(3) The Minister for Transport after consultation with the Minister, may, subject to any regulations under this section, issue policy directions to authorities in connection with the exercise of the powers of authorities under this Part.”.

(4) Section 60(1) of the Principal Act is amended by substituting for paragraph (e) the following:

“(e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person carries on business or, if an address for the service of a notification has been furnished by the person, that address, but only if—

(i) the sender’s—

(I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(II) facsimile machine generates a message confirming successful transmission of the total number of pages of the notification,

and

(ii) the notification is also given in one of the other ways mentioned in any of the preceding paragraphs.”.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádurtha.

39. In page 15, between lines 42 and 43, to insert the following:

“Amendment of Part 5 of Principal Act — electronic communications infrastructure roadworks and sharing.

18.—(1) Section 52 of the Principal Act is amended by—

(a) inserting after the definition of “Act of 2000” the following:

“ ‘authority’ means NRA or a road authority, as the case may be;”,

(b) substituting for the definition of “consent” the following:

“ ‘consent’ means a consent granted by an authority under section 53(3) to open a public road;”,

(c) inserting after the definition of “land” the following:

“ ‘NRA’ means National Roads Authority;”, and

(d) by substituting for the definitions of “public road”, “road”, “road authority” and “roadworks” the following:

“ ‘public road’ means a national road, regional road or local road;

‘road’, ‘national road’, ‘regional road’ and ‘local road’ have the meanings assigned to them, respectively, by the Roads Act 1993;

‘road authority’ has the meaning assigned to it by section 2 (inserted by section 11 of the Roads Act 2007) of the Roads Act 1993;

‘roadworks’ means the opening of a public road or any act or works that require or cause the closing of a public road or part of a public road, including the opening or closing of a public road or part of a public road for the purposes of opening ducts, for the purpose of the establishment, extension, replacement, repair, removal or maintenance of works on electronic communications infrastructure.”.

(2) The following section is substituted for section 53 of the Principal Act:

“53.—(1) A network operator shall not commence or carry out or cause to be commenced or carried out any roadworks unless—

(a) the operator has obtained the prior written consent under subsection (3) of—

(i) in the case of a national road, the NRA, or

(ii) in the case of any regional or local road, the road authority, in whose functional area the operator proposes to carry out the roadworks,

and

(b) the network operator or any person engaged by the network operator complies with any conditions contained in the consent.

(2) A network operator or a person engaged by the network operator who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000.

(3) Subject to this section and any regulations under section 56(2)—

(a) the NRA, following consultation, not exceeding 21 days, with the road authority in whose functional area the national road exists, may grant consent to a network operator, upon application to it by the operator, to carry out roadworks on a national road, or

(b) a road authority may grant consent to a network operator, upon application to it by the operator, to carry out roadworks on a regional road or local road in the functional area of the road authority,

for the purposes of—

(i) establishing underground electronic communications infrastructure and any associated physical infrastructure,

(ii) extending the underground electronic communications network to parts of the road under which electronic communications infrastructure has not previously been placed by that network operator,

(iii) carrying out roadworks on underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure, or

- (iv) installing communications infrastructure in ducts, which are the responsibility of an authority, on public roads,

subject to any conditions contained in the consent.

(4) A consent may contain conditions. Any conditions contained in a consent—

- (a) shall not discriminate unfairly between network operators, and
- (b) shall be consistent with the need for the authority to carry out its functions under this Part and under the Roads Acts 1993 to 2007 and the Road Traffic Acts 1961 to 2007.

(5) Where an authority proposes to grant a consent to a network operator, the consent may contain conditions which, without prejudice to any other conditions it proposes to impose on the network operator, may—

- (a) provide that network operators meet any losses, liabilities and costs suffered or incurred by the authority, under contractual arrangements with a third party, where such losses, liabilities and costs arise as a result of any act undertaken by the network operator, under section 53(3), in relation to electronic communications infrastructure,
- (b) include an indemnity in cases where ducts on national roads which are the provided by (and made available) by an authority to a network operator, for any loss or damage caused by third parties to the electronic communications infrastructure the property of the network operator, without prejudice to section 19(5) of the Roads Act 1993 and to any other non feausance available to an authority,
- (c) include a condition that the authority may have representatives present at work sites for the purpose of determining compliance with any conditions imposed in connection with any act undertaken by the network operator, under a consent issued under section 53(3), in relation to electronic communication infrastructure.

(6) An authority granting a consent shall notify the network operator, in writing, of the reason for any conditions contained in the consent.

(7) The NRA, in the case of a national road, following consultation, not exceeding 21 days, with the road authority in whose functional area the national road exists, or a road authority, in the case of regional and local roads in its functional area, may, subject to any regulations under section 56 (2), impose charges on network operators—

- (a) for the grant of consents to cover the administrative costs, including costs involved in monitoring compliance with consents, incurred by the authority under this section, and
- (b) for reasonable costs it may incur in making good long term damage to a public road as a result of road openings carried out by the network operator.

(8) The NRA, may make a scheme which will allow for the NRA to impose charges for the use of ducts provided by them to network operators subject to the approval of the Minister for Transport with the consent of the Minister for Communications, Energy and Natural Resources.

(9) When considering an application for a consent, an authority shall have regard to—

- (a) the existing and potential use and availability of space under the surface of the public road concerned, including—
 - (i) the requirements of the authority in the performance of its functions and responsibilities,
 - (ii) the course and depth of ducts to be laid by the applicant,
 - (iii) the existence of ducts in addition to those which are immediately required by any network operator, and
 - (iv) the existence of duct space in addition to that which is reasonably required by any network operator,
- (b) the safe and efficient operation of the public road,
- (c) road reconstruction, repair and maintenance costs that may arise as a consequence of the application,
- (d) the protection of the environment and of amenities including residential amenities,
- (e) the manner and timing of the reinstatement of the road, and
- (f) any scheme adopted under subsection (10), and
- (g) any contractual arrangements which an authority may have with a third party.

(10) The NRA, in the case of a national roads, following consultation, not exceeding 60 days, with the road authority in whose functional area the national road exists, or a road authority, in the case of regional and local roads in its functional area, may formulate and, after public consultation, adopt a scheme setting out its policy regarding—

- (a) the use of underground road capacity, including the rationing of any particular underground spaces below roads,
- (b) conditions (including restrictions and requirements) that may be imposed by it in relation to the grant of consents, either generally or with respect to specific areas or circumstances,
- (c) refusal of consents, either generally or with respect to specific areas or circumstances,
- (d) charges under this Part, and
- (e) emergency roadworks.

(11) The Minister for Transport, in consultation with the Minister, may issue guidelines to be followed by an authority in relation to public consultation regarding a scheme drawn up by it under subsection (10).

(12) An authority shall consult with the Commission before attaching a condition to a consent it proposes to grant requiring the applicant to lay additional ducts.

(13) Where the holder of a consent fails to comply with any condition attached to a consent, the authority which granted the consent may withdraw the consent.

(14) Where an authority proposes—

- (a) to refuse to grant consent,
- (b) to grant consent subject to conditions, or
- (c) to withdraw a consent granted by it,

the authority shall notify the network operator concerned in writing of the proposal and shall include in the notification a statement of the reasons for the proposal and of the right of the network operator to make representations to the authority under subsection (15).

(15) A network operator may, within 21 days of the receipt by the operator of a notification under subsection (14), make representations to the authority concerned in relation to the proposal.

(16) Where an authority—

- (a) after consideration of any representations made to it by a network operator under subsection (15), or
- (b) does not receive representations from the network operator concerned within the period specified in subsection (15),

decides—

- (i) to refuse to grant consent,
- (ii) to grant consent subject to conditions, or
- (iii) to withdraw its consent,

the authority shall, not more than 21 days after the expiration of the period specified in subsection (15), notify the network operator in writing of its decision and shall include in the notification a statement of the reasons for the decision and of the right of the network operator to appeal the decision under subsection (17).

(17) A network operator may, within 28 days of the receipt by the operator of a notification under subsection (16), appeal to the High Court against the decision concerned and the Court may—

- (a) confirm the decision,
- (b) amend the decision, or
- (c) direct the authority to grant the consent or refrain from withdrawing consent, as the case may be.

(18) Where the roadworks the subject of the application for consent under subsection (3) are deemed by the authority concerned to be emergency roadworks, the authority concerned shall grant a consent as soon as possible to minimise risk to persons or property.

(19) Where an application, referred to in subsection (18), is being considered by the NRA—

- (a) the consultation with the road authority concerned may be waived provided the road authority is informed of the roadworks, and
- (b) the NRA shall immediately inform the road authority, in whose functional area the road exists, of the application.

(20) A network operator shall be responsible for all costs incurred in the reinstatement of a road which the operator has opened for the purpose of—

- (a) the establishment of underground electronic communications infrastructure, or
- (b) maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure,

to a standard satisfactory to the authority concerned.

(21) The requirement to hold a licence under section 254 of the Act of 2000 in respect of subsection (1)(e) of that section does not apply where a network operator has been granted a consent under subsection (3).

(22) A network operator shall, on a request being made by an authority, provide among other things—

- (a) such information as the authority may require in relation to the utilisation of underground electronic communications infrastructure owned or operated by the operator, and
- (b) such access to underground electronic communications infrastructure owned or operated by the operator, as may be necessary to enable the authority to exercise its functions under this section.

(23) An authority may apply to the High Court for an order—

- (a) by way of injunction, to prohibit any non-compliance, or
- (b) by way of *mandamus*, to direct any compliance,

with a requirement of this section. The Court may grant such order as it sees fit.

(24) This section is without prejudice to section 101D (inserted by the Dublin Transport Authority (Dissolution) Act 1987) of the Road Traffic Act 1961 (which relates to directions given by local authorities to persons carrying out roadworks).

(25) A summary offence under subsection (2) may be prosecuted by—

- (a) where the offence relates to a national road, the NRA, or
- (b) where the offence, relates to a regional or local road, the road authority within whose functional area the offence is committed.”.

(3) Section 55 of the Principal Act is amended—

- (a) by substituting for subsection (1) the following:

“55.—(1) Notwithstanding section 254(4) of the Act of 2000 and subject to this section, where an authority undertakes work for the purposes of improving a public road, it shall pay to a network operator all reasonable costs incurred by the operator in the relocation of its electronic communications infrastructure and any associated physical infrastructure necessitated by and directly attributable to that work.”,

(b) in subsections (2), (3) and (5), by substituting “an authority” for “a road authority”,

(c) by substituting for subsection (4) the following:

“(4) Where an authority, on an application to it by a network operator to carry out roadworks over, along, on (under section 254 of the Act of 2000) or under (under section 53) a public road, gives the operator notice that the road is due to be improved by the authority within the period of 2 years of the date from which the operator intends to carry out the works, the authority shall not be responsible for the cost of relocating electronic communications infrastructure or anything connected with the works where the road improvement proceeds within that period.”,

and

(d) by inserting after subsection (5) the following:

“(6) In the case where ducts provided by the NRA for use by network operators are required to be moved arising from any works undertaken by an authority to improve a national road—

(a) the authority shall only cover the costs of relocating the ducts, necessitated and directly attributable to that work,

(b) the network operator or network operators using these ducts shall be responsible for any costs incurred by the operator in the relocation of its electronic communications infrastructure necessitated by and directly attributable to that work,

(c) the NRA shall provide reasonable notice of the roadworks to the network operator concerned.

(7) Where a network operator makes an application under section 53 (3), the NRA shall where it proposes to grant consent to the network operator in respect of the application, shall, inform the operator of the responsibility imposed on the network operator for relocation costs incurred by the network operator referred to in subsection 55(6)(b).”.

(4) The following section is substituted for section 56 of the Principal Act:

“56.—(1) The Minister may, with the consent of the Minister for Transport make regulation for the purposes of sections 54(2) and 55—

(a) to establish the basis for the calculation by a network operator of costs reasonably attributable to costs incurred by the network operator as a result of roadworks, and

(b) to establish an objective measure of works to be deemed to be improvements to electronic communications infrastructure for the purposes of this Part.

(2) The Minister for Transport may, with the approval of the Minister, make regulations for the purposes of section 53 in relation to—

- (a) any conditions, restrictions or requirements to be made in a consent,
- (b) the imposition of charges by authorities in respect of consents,
- (c) anything to be contained in schemes under section 53(10), and
- (d) emergency roadworks.

(3) The Minister for Transport after consultation with the Minister, may, subject to any regulations under this section, issue policy directions to authorities in connection with the exercise of the powers of authorities under this Part.”.

(5) Section 60(1) of the Principal Act is amended by substituting for paragraph (e) the following:

“(e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person carries on business or, if an address for the service of a notification has been furnished by the person, that address, but only if—

(i) the sender’s—

(I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(II) facsimile machine generates a message confirming successful transmission of the total number of pages of the notification,

and

(ii) the notification is also given in one of the other ways mentioned in any of the preceding paragraphs.”.”.

—Liz McManus, Simon Coveney.

40. In page 16, to delete lines 35 and 36.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.

41. In page 16, to delete lines 37 to 41.

—An tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha.