



Number 34 of 1996

TELECOMMUNICATIONS (MISCELLANEOUS PROVISIONS) ACT 1996

REVISED

Updated to 29 June 2016

This Revised Act is an administrative consolidation of *Telecommunications (Miscellaneous Provisions) Act 1996*. It is prepared by the Law Reform Commission in accordance with its function under *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), enacted 11 February 2016, and all statutory instruments up to and including *European Union (Consumer Information, Cancellation and Other Rights) (Amendment) Regulations 2016* (S.I. No. 336 of 2016), made 29 June 2016, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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OFFICE OF DIRECTOR OF TELECOMMUNICATIONS REGULATION

SECOND SCHEDULE

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PART I

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[No. 34.]

Telecommunications (Miscellaneous Provisions) Act 1996

[1996.]

PART II

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PART I

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Number 34 of 1996

TELECOMMUNICATIONS (MISCELLANEOUS PROVISIONS) ACT 1996

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AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF THE OFFICE OF DIRECTOR OF TELECOMMUNICATIONS REGULATION, FOR THE TRANSFER OF FUNCTIONS FROM THE MINISTER TO THE DIRECTOR, FOR THE IMPOSITION OF A LEVY ON PROVIDERS OF TELECOMMUNICATIONS SERVICES, AND FOR THE REGULATION OF TARIFFS FOR CERTAIN TELECOMMUNICATIONS SERVICES, TO AMEND THE POSTAL AND TELECOMMUNICATIONS SERVICES ACT, 1983, AND TO PROVIDE FOR RELATED MATTERS. [10th December, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act, except where the context otherwise requires—

["Commission" means the Commission for Communications Regulation established by Part 2 of the Communications Regulation Act 2002;]

"the company" means Bord Telecom Éireann;

[...]

"functions" includes powers and duties;

"the Minister" means the Minister for Transport, Energy and Communications;

"records" includes information stored electronically;

"the Principal Act" means the Postal and Telecommunications Services Act, 1983.

(2) A reference in this Act to a section, subsection or a Schedule is a reference to a section of, or subsection of, or Schedule to this Act, unless it is indicated that reference to some other Act is intended.

(3) A reference in this Act to any enactment, unless the context otherwise requires, shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

(4) A reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of powers and the carrying out of duties.

Director of
Telecommunica-
tions Regulation.

2.—[...]

Functions of Director. 3.—[...]

Transfer of functions from Minister to Director. 4.—[...]

Staff and other resources. 5.—[...]

Levies and fees. 6.—[...]

Tariff regulation. 7.—(1) In this section—

“basket of telecommunications services” means any telecommunications service or a grouping of such services as prescribed by order made from time to time by [the Commission] in accordance with this Act for the purpose of regulating charges for those services;

“price cap” means an overall limit on the annual percentage change in charges that can be imposed for any basket of telecommunications services, provided by any provider of telecommunications services, which is calculated in accordance with the following formula:

“overall limit” = $(\Delta \text{CPI}) - X$, where:

“ (ΔCPI) ” means the annual percentage change in the CPI;

“CPI” means the consumer price index number as compiled by the Central Statistics Office;

“X” means the adjustment specified by [the Commission];

“telecommunications service” includes—

(a) any communication service or combination of such services of any kind, whether delivered by wire, radio, fibre optics or any other means, and

(b) all connections, equipment, facilities, apparatus or other delivery or receipt mechanisms within a connected system or network or individually operated to furnish such services or the making available of such connections, equipment, facilities, apparatus or other delivery or receipt mechanisms individually or collectively.

(2) Subject to subsection (3), [the Commission] may make an order specifying—

(a) a price cap in respect of one or more than one basket of telecommunications services, and

(b) any restrictions or adjustments that may apply to each such basket or baskets or to the price cap formula concerned.

(3) An order under this section shall not be made unless [the Commission] is of the opinion that—

(a) there is no competition in the market for the supply of the telecommunications services concerned, or

(b) the provider of the telecommunications services concerned holds a dominant position in the market for the supply of those services.

(4) For the purposes of this section, [the Commission] may request in writing a provider of telecommunications services to provide information to him or her about the services provided by that provider.

(5) [...]

(6) [...]

(7) [...]

(8) For the avoidance of doubt, where the value of a price cap is negative that value shall represent the minimum percentage reduction which shall take place in charges that can be imposed for any basket of telecommunications services provided by any provider of telecommunications services.

Issue of shares,
etc.

8.—(1) Notwithstanding any provision of the Principal Act—

(a) [...]

[(aa) The Minister may not dispose of any shares in the company other than as provided for in *subsection (3)(a)* without the general principles of the sale being laid before and approved by Dáil Éireann.]

(b) subject to *subsection (2)*, the Minister or the Minister for Finance may buy, sell or otherwise transfer shares in the company.

(2) (a) [...]

(b) The Minister or the Minister for Finance may subscribe for further shares in the company to an amount not exceeding £100,000,000.

(c) All moneys required by the Minister for Finance or by the Minister with the consent of the Minister for Finance to meet sums payable by those Ministers in accordance with this section shall be paid out of the Central Fund or the growing produce thereof.

(3) [...]

Miscellaneous
agreements.

9.—(1) [Subject to *subsection (2)*, the Minister with the consent of the Minister for Finance may enter into one or more agreements in connection with the sale or issue of equity in the company or enter into one or more agreements in connection with both the sale and issue of equity in the company.]

(2) Any agreement entered into pursuant to *subsection (1)* may include—

(a) provisions relating to—

(i) amendments to the memorandum and articles of association of the company,

(ii) directors,

(iii) shareholders,

(iv) voting rights,

(v) dividend policy,

(vi) investments,

(vii) representations, warranties and indemnities, and

(viii) restrictions on the alienability of shares;

and

(b) such other matters as the Minister with the consent of the Minister for Finance may from time to time consent to [including customary provisions contained in an underwriting agreement].

(3) [Section 60 of the Companies Act, 1963, shall not apply to any representation made or warranty or indemnity given by the company or any subsidiary thereof (within the meaning of section 155(1) of the Companies Act, 1963), or any financial obligations undertaken in relation thereto by the company, in connection with the issue by the company or the sale or transfer by any shareholder of shares in the company pursuant to an agreement under *subsection (1)* entered into by the Minister, with the consent of the Minister for Finance.]

[(4) Notwithstanding *subsection (13)(b)* of section 60 of the Companies Act, 1963, section 60 of that Act shall not apply to the provision, whether directly or indirectly, by the company or any subsidiary thereof (within the meaning of section 155(1) of the Companies Act, 1963) of money or a financial arrangement including a loan, guarantee, the provision of security or otherwise in connection with the purchase of, or subscription for, shares in the company by an employee share ownership trust established by the company, or the transfer thereto of such shares, irrespective of whether or not all or a portion of such shares are pledged as security or otherwise to any third party.]

Employee directors.

10.—[...]

Amendment of Principal Act.

11.—[...]

Authorised officers.

[12.—(1) The Commission may appoint persons to be authorised officers for the purposes of this section.

(2) The Commission shall provide each person appointed under *subsection (1)* with a certificate of appointment.

(3) When exercising a power conferred by this section, an authorised officer shall, if asked to do so by the person in relation to whom the power is being exercised, produce the certificate to the person for inspection.

(4) For the purposes of obtaining information necessary for the performance of the Commission's functions under this Act, an authorised officer may do all or any of the following:

(a) enter at any time the premises of a provider of telecommunications services for the purpose of exercising powers conferred by this section;

(b) require any provider of telecommunications services to produce records relating to the provision of telecommunications services that are within the provider's power or control and to provide the officer with such information as the officer may reasonably require in relation to any entries in the records;

(c) inspect or take copies of any such records or any of their contents;

(d) require a provider of telecommunications services mentioned in paragraph (a) to provide the officer with such information as the officer may reasonably require with respect to the provision of telecommunications services;

(e) make such inspections, tests and measurements of machinery, apparatus and other equipment on the premises as the officer considers appropriate.]

Offences.

13.—[(1) A person who fails to comply with—

(a) an order under *section 7(2)*, or

(b) a request under *section 7(4)*,

is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

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

(3) Where an offence under this Act 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, any person, being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) Summary proceedings for an offence under this Act may be brought and prosecuted by the Director.

(5) Notwithstanding *section 10 (4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be brought within 12 months from the date of the offence.

Repeals.

14.—[...]

Laying of orders,

15.—Every order made under this Act (other than an order made under *section 7* or under *section 17 (2)*) shall, as soon as may be after it is made, be laid before each of the Houses of the Oireachtas and if a resolution annulling the order is passed by either such House within the next subsequent 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything done thereunder.

Expenses.

16.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and commencement.

17.—(1) This Act may be cited as the Telecommunications (Miscellaneous Provisions) Act, 1996.

(2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as, by order or orders of the Minister under this section, may be appointed therefor either generally or with reference to any particular purpose or provision, and different days may also be appointed for different purposes and different provisions of this Act.

(3) This Act shall come into operation 90 days following its passing unless an order or orders has or have been made under *subsection (2)*.

Section 2.

FIRST SCHEDULE

OFFICE OF DIRECTOR OF TELECOMMUNICATIONS REGULATION

Section 4 (2).

SECOND SCHEDULE

TRANSFER OF FUNCTIONS FROM MINISTER TO DIRECTOR

PART I

ACTS UNDER WHICH FUNCTIONS ARE TRANSFERRED

PART II

STATUTORY INSTRUMENTS UNDER WHICH FUNCTIONS ARE TRANSFERRED

Section 14.

THIRD SCHEDULE

REPEALS

PART I

PART II

ACTS REFERRED TO

Broadcasting Act, 1990	1990, No. 24
Broadcasting and Wireless Telegraphy Act, 1988	1988, No. 19
Broadcasting Authority Act, 1960	1960, No. 10
Broadcasting Authority (Amendment) Act, 1976	1976, No. 37
Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Acts, 1956 and 1958	
Companies Act, 1963	1963, No. 33
Companies Acts, 1963 to 1990	
European Assembly Elections Act, 1977	1977, No. 30
European Parliament Elections Act, 1993	1993, No. 30
Finance Act, 1985	1985, No. 10
Irish Aviation Authority Act, 1993	1993, No. 29
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Postal and Telecommunications Services Act, 1983	1983, No. 24

Public Offices Fees Act, 1879	1879, c. 58
Radio and Television Act, 1988	1988, No. 20
Wireless Telegraphy Act, 1926	1926, No. 45
Wireless Telegraphy Act, 1972	1972, No. 5
Worker Participation (State Enterprises) Act, 1977	1977, No. 6
Worker Participation (State Enterprises) Acts, 1977 and 1988	