Changes to Legislation: as of 11 November 2026, there are changes to this Act which have not been implemented by the Revised Acts editorial team, see highlighted entries **here**. Note that some amendments may not be in force until commenced by a commencement order or other provision.

Number 20 *of* 2002

COMMUNICATIONS REGULATION ACT 2002

REVISED

Updated to 31 July 2026

This Revised Act is an administrative consolidation of *Communications Regulation Act 2002*. 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 the *Development (Strategic Gas Reserve) Act 2026* (36/2026), enacted 23 July 2026, and all statutory instruments up to and including the *Regulation of Artificial Intelligence Act 2026 (Commencement) Order 2026* (S.I. No. 403 of 2026), made 31 July 2026, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 20 *of* 2002

COMMUNICATIONS REGULATION ACT 2002

REVISED

Updated to 31 July 2026

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title.
2. Interpretation.
3. Laying of orders and regulations before Houses of Oireachtas.
4. Establishment day.
5. Expenses.

PART 2

COMMISSION FOR COMMUNICATIONS REGULATION

6. Establishment of Commission.
7. Seal of Commission.
8. Dissolution of Office of Director of Telecommunications Regulation.
9. Transfer of functions. *(Repealed)*
10. Functions of Commission.
11. Independence of Commission.
11A. Objectivity and transparency of Commission in regulating under Electronic Communications Code Regulations.
12. Objectives of Commission.
12A. Power of Minister to request advice from Commission.
13. Directions by Minister.
13A. Purpose of sections 13B and 13C.
13B. Power of Minister to obtain information from Commission.
13C. Power of Minister to obtain information from undertaking.
13D. Power of Commission to obtain information from undertaking.
13E. Alternative procedure for enforcement of section 13C or 13D.
13EA. Power of Commission to share information with Minister.
13F. Power of Commission to obtain information from postal service provider.
13G. Alternative procedure for enforcement of section 13F.

14. Composition and procedure of Commission.
15. Appointment and term of office of Commissioners.
16. Appointment of Chairperson of Commission.
17. Deputy commissioner.
18. Resignation and removal of Commissioners.
19. Restrictions relating to Commissioners.
20. Staff of Commission.
21. Performance of certain functions by staff.
22. Consultants.
23. Membership of Houses of Oireachtas or European Parliament by staff.
24. Prohibition on unauthorised disclosure of information.
24A. Protection of whistleblowers.
24B. Tortious liability of undertaking or associate for victimising whistleblower.
24C. Offence to make false disclosure.
25. Disclosure of interests.
26. Superannuation of Commissioners.
27. Superannuation of staff.
28. Advances by Minister to Commission.
29. Borrowings.
30. Levies and fees.
31. Strategy statements.
31A. Financial year of Commission.
31B. Commission to prepare annual action plan.
31C. Commission to prepare annual financial forecast.
31D. Report on state of electronic communication markets.
32. Accounts and annual report.
33. Code of financial management.
34. Accountability of Commission to Committees of Oireachtas.
35. Radio frequency plan.
36. Public service requirements.
37. Regulations relating to wireless telegraphy.
38. Repeals.

SPECIAL POWERS TO REQUIRE PERSONS TO GIVE EVIDENCE OR PRODUCE DOCUMENTS

38A. Commission may require persons to give evidence or produce documents.
38B. Conduct of proceeding under this Part.
38C. Proceeding under this Part to be normally in private.
38D. Offence to fail to appear before Commission
38E. Offence to refuse to be sworn or to answer question.
38F. Protection of persons appearing before Commission under section 38A.
38G. Payment of allowances and expenses to persons who appear before Commission.

38H. Trial of offences under this Part.

PART 3

ENFORCEMENT

39. Authorised officers.
39A. Requests for information relating to investigations.
40. Search warrants.
40A. Search warrants in relation to certain competition law matters.
40B. Search warrants relevant to assisting the European Commission with an inspection.
41. Indemnification.
42. Offences of bodies corporate.
43. Prosecution of summary offences by Commission.
44. Notice by Commission of intention to prosecute, etc.
45. Undertaking not to overcharge or charge for services not supplied.
46. Commission may apply to High Court for order to restrain repeated or apprehended contravention of section 45.
46A. Special powers enabling Minister to make regulations to give effect to European Communities instruments relating to communications matters.
46B. Admissibility of expert evidence in proceedings under this Act and related enactments.
46C. Power of court to order copies of certain documents to be given to juries in certain criminal proceedings.
46D. Presumptions to apply in civil and criminal proceedings under this Act and related enactments.
46E. Admissibility of statements contained in certain documents.

PART 4

TRANSITION PROVISIONS

47. Transfer of property and liabilities of Director to Commission.
48. Preservation of certain continuing contracts.
49. Adaptation of certain documents.
50. Continuation of certain matters by Commission.
51. Pending legal proceedings.

PART 5

ELECTRONIC COMMUNICATIONS INFRASTRUCTURE ROAD WORKS AND SHARING

52. Interpretation (*Part 5*).
53. Opening of public road for establishment of underground electronic communications infrastructure.
54. Use of public road for establishment of electronic communications infrastructure overground.
55. Cost apportionment for electronic communications infrastructure relocation due to road improvements.
56. Regulations and policy directions to authorities.

57. Physical infrastructure sharing by infrastructure providers.
57A. Power of High Court to make compliance orders in respect of conditions imposed under section 57.
58. Lopping of trees.

PART 6

Emergency Call Answering Service (ECAS)

58A. Interpretation: Part 6.
58B. Power of Minister to enter into contract for the operation of emergency call answering service (ECAS).
58C. Payment of ECAS call handling fees.
58D. Commission to conduct review of maximum call handling fee.
58E. ECAS operator to pay reasonable costs of Commission in monitoring service.
58F. ECAS operator not liable for certain actions done in good faith.
58G. Commission to report to Minister on operation of service
58H. Interim measure pending the Minister entering into contract under section 58B.

PART 7

Miscellaneous Provisions

59. Repeals and revocation.
60. Service of notices.
61. Privileged legal material.
62. Freedom of Information Act not to apply to certain confidential information.
63. Publication of certain notices.

SCHEDULE 1

Related Enactments for the Purposes of this Act

Part 1

Acts

Part 2

Statutory Instruments

SCHEDULE 2

Enactments Repealed

Acts Referred to

Arbitration Acts, 1954 to 1998	
Broadcasting Act, 1990	1990, No. 24
Broadcasting Act, 2001	2001, No. 4
Broadcasting and Wireless Telegraphy Act, 1988	1988, No. 19
Broadcasting Authority Act, 1960	1960, No. 10
Civil Service Regulation Act, 1956	1956, No. 46
Companies Acts, 1963 to 2001	
Comptroller and Auditor General (Amendment) Act, 1993	1993, No. 8
Courts Act, 1981	1981, No. 11
Dublin Transport Authority (Dissolution) Act, 1987	1987, No. 34
European Communities Act, 1972	1972, No. 27
European Parliament Elections Act, 1997	1997, No. 2
Freedom of Information Act, 1997	1997, No. 13
Irish Aviation Authority Act, 1993	1993, No. 29
Minimum Notice and Terms of Employment Acts, 1973 and 1994	
Organisation of Working Time Act, 1997	1997, No. 20
Planning and Development Act, 2000	2000, No. 30
Postal and Telecommunications Services Act, 1983	1983, No. 24
Public Offices Fees Act, 1879	42 & 43 Vic., c. 58
Radio and Television Act, 1988	1988, No. 20
Redundancy Payments Acts, 1967 to 1991	
Roads Act, 1993	1993, No. 14
Roads Acts, 1993 to 2001	
Road Traffic Act, 1961	1961, No. 24
Road Traffic Acts, 1961 to 2002	
Superannuation Act, 1909	9 Edw. 7., c. 10
Telecommunications (Miscellaneous Provisions) Act, 1996	1996, No. 34
Telegraph Act, 1863	26 & 27 Vic., c. 112
Telegraph Act, 1869	32 & 33 Vic., c. 73
Telegraph Act, 1878	41 & 42 Vic., c. 76
Telegraph Act, 1892	55 & 56 Vic., c. 59
Telegraph Act, 1899	62 & 63 Vic., c. 38
Telegraph (Amendment) Act, 1868	31 & 32 Vic., c. 110
Telegraph (Arbitration) Act, 1909	9 Edw. 7., c. 20
Telegraph (Construction) Act, 1908	8 Edw. 7., c. 33
Telegraph (Construction) Act, 1911	1 & 2 Geo. 5., c. 39
Telegraph (Construction) Act, 1916	6 & 7 Geo. 5., c. 40
Unfair Dismissals Acts, 1977 to 1993	
Wireless Telegraphy Act, 1926	1926, No. 45
Wireless Telegraphy Act, 1972	1972, No. 5
Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5

Number 20 *of* 2002

COMMUNICATIONS REGULATION ACT 2002

REVISED

Updated to 31 July 2026

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE COMMISSION FOR COMMUNICATIONS REGULATION OR, IN THE IRISH LANGUAGE, AS AN COIMISIÚN UM RIALÁIL CUMARSÁIDE, TO DEFINE ITS FUNCTIONS, TO DISSOLVE THE OFFICE OF THE DIRECTOR OF TELECOMMUNICATIONS REGULATION, TO TRANSFER THE FUNCTIONS OF THE DIRECTOR OF TELECOMMUNICATIONS REGULATION TO THE COMMISSION FOR COMMUNICATIONS REGULATION, TO MAKE PROVISION IN RESPECT OF THE OPENING OF PUBLIC ROADS FOR ELECTRONIC COMMUNICATIONS INFRASTRUCTURE, TO PROVIDE FOR THE SHARING OF INFRASTRUCTURE, TO REPEAL CERTAIN ENACTMENTS AND PROVISIONS OF ENACTMENTS AND TO PROVIDE FOR CONNECTED MATTERS. [27*th April*, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title.

1.—This Act may be cited as the Communications Regulation Act, 2002.

Interpretation.

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

"Act of 1972" means European Communities Act, 1972;

"Act of 1996" means Telecommunications (Miscellaneous Provisions) Act, 1996;

F1**[**"Agency" means the National Consumer Agency established by the Consumer Protection Act 2007;**]**

F2**[**"associate", in relation to an undertaking, means—

(*a*) a holding company of the undertaking, or

(*b*) a subsidiary company of the undertaking, or

(*c*) a company that is a subsidiary of a body corporate, if the undertaking is also a subsidiary of the body, but neither company is a subsidiary of the other, or

(*d*) a body corporate that is not a subsidiary of the undertaking but in respect of which the undertaking is beneficially entitled to more than 20 per cent of the nominal value of either—

(i) the allotted share capital of the body, or

(ii) the shares carrying voting rights (other than voting rights which arise only in specified circumstances) of the body,

or

(*e*) a partnership or joint venture in which the undertaking has a financial interest;**]**

F3**[**"associated facilities" means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;**]**

F4**[**"associated service" means a service associated with an electronic communications network or an electronic communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;**]**

F2**[**"association of undertakings" a body corporate that comprises one or more undertakings but is not itself an undertaking;**]**

"Civil Service" has the meaning assigned to it by the Civil Service Regulation Act, 1956;

"Commission" means the Commission for Communications Regulation established by *Part 2*;

"Commissioner" means a member of the Commission;

"Community" means European Communities;

F5**[**"conditional access systems" means any technical measure, authentication system or arrangement or both whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation;**]**

"Director" means the Director of Telecommunications Regulation appointed under the Act of 1996 and, where the context so admits, includes the Office of the Director of Telecommunications Regulation;

F6**[**"Electronic Communications Code Regulations" means European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022);**]**

"electronic communications market" means electronic communications networks, electronic communications services and associated facilities;

F3**[**"electronic communications network" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit-and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;**]**

F3**[**"electronic communications service" means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:

(*a*) "internet access service" as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120 of 25 November 2015[7],

[7] OJ No. L310, 26.11.2015, p. 1

(*b*) interpersonal communications service, and

(*c*) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine to machine services and for broadcasting**]**

F3**[**"end-user" means a user not providing public electronic communications network or publicly available electronic communications services;**]**

F4**[**"end-user of premium rate services" means a person to whom such a service is supplied, or who has asked for the supply of such a service otherwise than for the purpose of resupply;**]**

"essential requirements" has the meaning assigned to it by Article 2 of Directive 97/13/EC of 10 April 1997[3];

"establishment day" means the day appointed under *section 4* to be the establishment day for the purposes of this Act;

F2**[**"failure to comply" includes contravene;

"financial year", in relation to the Commission, means the financial year of the Commission as specified in or in accordance with *section 31A*;**]**

F4**[**"interpersonal communications service" means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;**]**

F7**[**"Minister" means Minister for Communications, Energy and Natural Resources;**]**

"Office" means Office of the Director of Telecommunications Regulation;

F8**[**"postal services" has the meaning assigned to it by the Communications Regulation (Postal Services) Act 2011;**]**

F9**[**"postal service provider" has the meaning assigned to it by the Communications Regulation (Postal Services) Act 2011;

"postal service user" has the meaning assigned to it by the Communications Regulation (Postal Services) Act 2011;

"postal service within the scope of the universal postal service" has the meaning assigned to it by the Communications Regulation (Postal Services) Act 2011;**]**

F10**[**"premium rate service" has the meaning assigned to it by the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010;

"premium rate service licence" means a licence granted under *section 6* of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 to provide premium rate services;

"premium rate service provider" has the meaning assigned to it by the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010;**]**

"prescribed" means prescribed by regulations made by the Minister;

F2**[**"related enactment" means—

(*a*) an enactment specified in *Part 1* of *Schedule 1*, or

(*b*) a statutory instrument specified in *Part 2* of that Schedule, or

[3] O.J. No. L117, 7.5.97, p. 15.

(*c*) a statutory instrument made by the Minister for the purpose of giving effect to an act of an institution of the European Communities relating to—

(i) the provision of an electronic communications service, an electronic communications network or associated facility, or

(ii) the radio frequency spectrum or national numbering resource, or

(iii) a postal service,

or

(*d*) a statutory instrument made by the Commission under an Act specified in *Part 1* of *Schedule 1*, or

(*e*) any Act or statutory instrument declared by a provision of another Act or statutory instrument to be a related enactment for the purposes of this Act;**]**

"superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death;

F11**[**"television set" has the meaning assigned to it by section 140 of the Broadcasting Act 2009;**]**

F2**[**"this Act" includes all statutory instruments made under this Act;**]**

"transferred function" means a function transferred to the Commission under *section 9*;

"undertaking" means a provider of electronic communications networks or services or associated facilities;

F12**[**"universal postal service" has the meaning assigned to it by the Communications Regulation (Postal Services) Act 2011;**]**

"user" means a natural or legal person using or requesting a publicly available electronic communications service.

(2)—F13**[**...**]**

Laying of orders and regulations before Houses of Oireachtas.

3.—(1) Other than an order under *section 4*, every order or regulation made under this Act by the Minister or the Minister for the Environment and Local Government shall be laid before each of the Houses of the Oireachtas as soon as practicable after it is made.

(2) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which an order or a regulation was laid before it in accordance with *subsection (1)*, annul the order or regulation.

(3) The annulment of an order or regulation under this section takes effect immediately on the passing of the resolution concerned, but does not affect anything that was F14**[**done under the order or regulation**]** before the passing of the resolution.

Establishment day.

4.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Expenses.

5.—The expenses incurred by the Minister and the Minister for the Environment and Local Government 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.

PART 2

COMMISSION FOR COMMUNICATIONS REGULATION

Establishment of Commission.

6.—(1) On the establishment day there is established a body to be known as the Commission for Communications Regulation or, in the Irish language, An Coimisiún um Rialáil Cumarsáide, which shall perform the functions conferred on it by or under this Act.

(2) The Commission shall be a body corporate with perpetual succession and a seal and power—

(*a*) to sue and be used in its corporate name,

(*b*) to acquire, hold and dispose of land or an interest in land, and

(*c*) to acquire, hold and dispose of any other property.

Seal of Commission.

7.—(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal shall be authenticated by the signature of—

(*a*) a Commissioner, or

(*b*) a member of the staff of the Commission, authorised by the Commission to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and every document—

(*a*) purporting to be an instrument made by and to be sealed with the seal of the Commission, and

(*b*) purporting to be authenticated in accordance with *subsection (2)*,

shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Dissolution of Office of Director of Telecommunications Regulation.

8.—On the establishment day the Office of the Director of Telecommunications Regulation is dissolved.

Transfer of functions.

9.— F15**[**...**]**

Functions of Commission.

10.—(1) The functions of the Commission F16**[**are**]**—

(*a*) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,

F17**[**(*aa*) to ensure compliance by undertakings with obligations under Regulation (EU) No. 612/2022 of the European Parliament and of the Council of 6 April 2022,**]**

F18**[**(*ab*) F19**[**...**]]**

F20**[**(*ac*) F19**[**...**]]**

F21**[**(*ad*) to closely monitor and ensure compliance by undertakings, including providers of internet access services within the meaning of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015[2], with their obligations under Articles 3, 4 and 5 of those Regulations,**]**

[2] O.J. No. L310, 26.11.2015, p. 1.

F22**[**(*ae*) to perform the tasks assigned to it under the Electronic Communications Code Regulations,**]**

F23**[**(*ae*) the functions of a national regulatory authority under Article 5a (inserted by Article 50 of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018[3]) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015[4],**]**

F24**[**(*af*) to ensure compliance with, and to carry out the functions assigned to it by, the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022),**]**

F25**[***(af)* to monitor and ensure compliance by undertakings and premium rate service providers with Part 3 of the Consumer Protection Act 2007,

(*ag*) to monitor and ensure compliance by undertakings and premium rate service providers with F26**[**Parts 4, 5 and 6**]** of the Consumer Rights Act 2022,**]**

F27**[**(*ah*) to monitor and ensure compliance with the Regulation of Artificial Intelligence Act 2026 and Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024[9] laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act),**]**

(*b*) to manage the radio frequency spectrum and the national numbering resource, in accordance with a direction under *section 13*,

F28**[**(*ba*) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,**]**

F29**[**(*bb*) to undertake a review of any consequences, including for terminal dues, of the repeal, under section 1 of the Communications Regulation (Postal Services) (Amendment) Act 2017, of section 30 of the Communications Regulation (Postal Services) Act 2011 which review shall commence immediately following the expiration of 2 years after the coming into operation of the Communications Regulation (Postal Services) (Amendment) Act 2017 and to prepare and furnish a report to the Minister of the findings of the Commission resulting from the review not later than 6 months after the commencement of the review,**]**

F30**[**(*c*) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the *Communications Regulation Acts 2002 to 2011* in relation to the provision of postal services,**]**

F31**[**(*ca*) to monitor the quality and efficiency of the emergency call answering service established under *Part 6*,**]**

F32**[**(*cb*) to ensure compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services,**]**

F33**[**(*d*) to carry out investigations into matters relating to—

(i) the supply of, and access to, electronic communications services, electronic communications networks and associated facilities and the transmissions of such services on such networks, and

(ii) the provision, content and promotion of premium rate services,**]**

F34**[**(*da*) for the purpose of contributing to an open and competitive market and also for statistical purposes, to collect, compile, extract, disseminate and publish information from undertakings relating to the provision of electronic communications services, electronic communications networks

[3] O.J. No. L321, 17.12.2018, p. 1.
[4] O.J. No. L310, 27.11.2015, p. 1.
[9] OJ L, 2024/1689, 12.7.2024.

and associated facilities and the transmission of such services F35**[**on those networks**]]**

(*e*) to ensure compliance, as appropriate, by persons in relation to the placing on the market of communications equipment and the placing on the market and putting into service F35**[**of radio equipment, and**]**

F24**[**(*f*) to advise the Minister, when requested by him or her, on matters relating to the electronic communications market and matters relating to the functions of the Commission.**]**

F36**[**F37**[**(1A) The functions of the Competition and Consumer Protection Commission specified in *subsection (1B)* are (in so far as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services) also functions of the Commission for Communications Regulation, and *subsections (1B)* to *(1E)* have effect for the purposes of this subsection.**]**

F37**[**(1B) The functions of the Competition and Consumer Protection Commission referred to in *subsection (1A)* are the functions of that Commission under—

(a) sections 71 to 73, 75, 77, 80 to 82, 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to Part 3 of that Act,

(b) sections 71 to 73, 75, 77, 80, 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to Parts 4 and 5 of the Consumer Rights Act 2022, and

(c) sections 73, 75, 77, 80, 85 to 87 and 90 of the Consumer Protection Act 2007 in relation to Part 6 of the Consumer Rights Act 2022.**]**

(1C) *Subsection (1A)* operates to vest in the Commission, concurrently with the vesting in the Agency of those functions by the Consumer Protection Act 2007, the functions specified in *subsection (1B)*.

(1D) Accordingly—

(*a*) functions so specified are, subject to any relevant co-operation agreement entered into under section 21 of the Consumer Protection Act 2007, capable of being performed by either the Agency or the Commission, and

(*b*) subject to *subsection (1E)*, references to the Agency in the provisions of the F37**[**Consumer Protection Act 2007**]** specified in *subsection (1B)* are to be read as including references to the Commission and those provisions otherwise apply.

(1E) Where any section of the Consumer Protection Act 2007 specified in *subsection (1B)* provides for anything to be done in relation to the Agency (whether the giving of notice to it, the submitting of a thing to it or the doing of any other thing) then, if a co-operation agreement entered into under section 21 of that Act so specifies, it is sufficient compliance with the section concerned if the thing is done in relation to the Agency or the Commission as is specified in that agreement.**]**

F35**[**(2) The Commission may carry out an investigation referred to in *subsection (1)* either on its own initiative or on foot of a complaint.**]**

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions F38**[**under this or any other Act**]**.

(4) The Commission shall be the national regulatory authority for the purposes of Regulation No. 2887/2000 of 18 December 2000[5] of the European Parliament and of the Council on unbundled access to the local loop.

F29**[**(5) (a) In carrying out the review under *subsection (1)(bb)* the Commission may consult with such persons as it considers appropriate. The Commission shall complete this consultation within a period of 42 days.

[5] O.J. No. L336, 30.12.2000, p. 4.

(b) The Minister shall cause a copy of the report prepared under *subsection (1)(bb)* to be laid before each House of the Oireachtas as soon as practicable after it is furnished to him or her by the Commission.

(6) In *subsection (1)(bb)* "terminal dues" has the same meaning as it has in Part 2 of the Communications Regulation (Postal Services) Act 2011.**]**

Independence of Commission.

11.— Subject to this Act, the Commission shall be independent in the exercise of its functions.

F39**[**Objectivity and transparency of Commission in regulating under Electronic Communications Code Regulations.

11A.— For the purposes of performing its tasks under the Electronic Communications Code Regulations the Commission shall act objectively in a transparent manner and be accountable in accordance with the law of the European Union and shall not seek or take instructions from any other body in relation to tasks assigned to it under law implementing the law of the European Union.**]**

Objectives of Commission.

12.—(1) The objectives of the Commission in exercising its functions shall be as follows—

(*a*) in relation to the provision of electronic communications networks, electronic communications services and associated facilities—

(i) to promote competition,

(ii) to contribute to the development of the internal market, and

(iii) to promote the interests of users within the Community,

(*b*) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a direction under *section 13*, F40**[**...**]**

F41**[**(*c*) in relation to the provision of postal services—

(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) subject to *subparagraph (i)*, to facilitate the development of competition and innovation in the market for postal service provision,

and**]**

F42**[**(*d*) to protect the interests of end users of premium rate services.**]**

(2) In relation to the objectives referred to in *subsection (1)(a)*, the Commission shall take all reasonable measures which are aimed at achieving those objectives, including—

(*a*) in so far as the promotion of competition is concerned—

(i) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality,

(ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,

(iii) F43**[**...**]**

(iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,

(*b*) in so far as contributing to the development of the internal market is concerned—

(i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,

(ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,

(iii) F43**[**...**]**

(iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field,

and

(*c*) in so far as promotion of the interests of users within the Community is concerned—

(i) ensuring that all users have access to a universal service,

(ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,

(iii) contributing to ensuring a high level of protection of personal data and privacy,

(iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,

(v) encouraging access to the internet at reasonable cost to users,

(vi) addressing the needs of specific social groups, in particular disabled users, and

(vii) ensuring that the integrity and security of public communications networks are maintained.

F44**[**(2A) In relation to the objectives referred to in *subsection (1)(c)*, the Commission shall take all reasonable measures aimed at achieving those objectives, including—

(*a*) establishing such monitoring and regulatory procedures for the purposes of ensuring compliance by postal service providers with the obligations imposed on them by or under the *Communications Regulation Acts 2002 to 2011* as are necessary to secure the provision of a universal postal service,

(*b*) ensuring that postal service users may avail of a universal postal service that meets their reasonable needs,

(*c*) in so far as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality, and

(*d*) in so far as the promotion of the interests of postal service users within the Community is concerned—

(i) ensuring a high level of protection for postal service users in their dealings with postal service providers, in particular by—

(I) ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved, and

(II) consulting and cooperating with the National Consumer Agency as appropriate,

and

(ii) addressing the needs of specific social groups, in particular, disabled postal service users.**]**

(3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.

(4) In carrying out its functions, the Commission shall, without prejudice to F41**[**subsections *(1), (2), (2A)* and *(3)***]**, have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.

(5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.

(6) The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in *subsection (1)(a)* does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.

(7) In this section, "national numbering scheme" means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.

F45**[**Power of Minister to request advice from Commission

12A.— The Minister may request the Commission to advise him or her on matters relating to the electronic communications market and matters relating to the functions of the Commission.**]**

Directions by Minister.

13.—(1) In the interests of the proper and effective regulation of the F46**[**electronic communications, premium rate services**]** and postal markets, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, the Minister may give such policy directions to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions. The Commission shall comply with any such direction.

(2) Before giving a direction under *subsection (1)*, the Minister shall give to the Commission and publish a draft of the proposed direction and—

(*a*) give the reasons for it, and

(*b*) specify the period (being not less than 21 days from giving it to the Commission or such publication, whichever is the later) within which representations relating to the proposal may be made by interested parties.

(3) The Minister, having considered any representations made under *subsection (2)*, may give the direction under *subsection (1)* with or without amendment.

(4) Where the Minister proposes to make a direction under *subsection (1)* which, in the opinion of the Minister, has or may relate to the functions of another Minister of the Government, the Minister shall not give to the Commission or publish a draft of the proposal under *subsection (2)* without prior consultation with that other Minister of the Government.

(5) A direction under *subsection (1)* relating to management of the radio frequency spectrum may include directions relating to—

(*a*) the allocation of particular bands of spectrum for specific categories of service, and

(*b*) the means by which entitlements to use such spectrum may be assigned (including appropriate fees),

and in giving such direction the Minister shall have regard to principles of good frequency management.

(6) A direction under *subsection (1)* relating to fees referred to in *subsection (5)(b)* may only be given with the consent of the Minister for Finance.

(7) The Minister shall not give a direction under *subsection (1)* in respect of—

(*a*) a person—

(i) who has applied for, or holds a licence or authorisation, or

(ii) to whom a licence or authorisation may be, granted by the Commission, or

F47**[**(*aa*) a postal service provider who is deemed to be authorised in accordance with section 38 of the Communications Regulation (Postal Services) Act 2011, or**]**

(*b*) the performance of the functions of the Commission in relation to F48**[**individual undertakings, postal service providers or persons**]**.

(8) Where the Minister gives a direction under *subsection (1)*, a notice of such direction and details thereof, including reasons for giving the direction, shall be published in *Iris Oifigiúil*.

F49**[**Purpose of *sections 13B* and *13C*.

13A.— The purpose of *sections 13B* and *13C* is to enable the Minister to obtain information in order to formulate policies and plans to deal with emergencies and network security issues that may arise in connection with the provision of electronic communications services.**]**

F50**[**Power of Minister to obtain information from Commission.

13B.— For the purpose specified in *section 13A*, the Minister may, by notice in writing, require the Commission to provide the Minister with written information concerning either or both of the following:

(*a*) the technical operation or performance of electronic communications networks and infrastructures in the State;

(*b*) the breakdown or malfunctioning of an electronic communications network.**]**

F51**[**Power of Minister to obtain information from undertaking.

13C.— (1) For the purpose specified in *section 13A*, the Minister may, by notice in writing, require an undertaking to provide the Minister with written information concerning all or any of the following:

(*a*) the technical operation or performance of the undertaking's electronic communications service in the context of the relevant electronic communications network;

(*b*) the breakdown or malfunctioning of any part of the undertaking's electronic communications service;

(*c*) the operation of the undertaking in relation to electronic communications infrastructure.

(2) An undertaking commits an offence if it—

(*a*) fails to comply with a requirement made under *subsection (1)* within the period specified in the notice or within such extended period as the Minister allows, or

(*b*) in purporting to comply with such a requirement, provides information to the Minister that the undertaking knows to be false or misleading.

(3) In proceedings for an offence involving a failure by an undertaking to comply with a requirement made under *subsection (1)*, it is a defence if the undertaking establishes—

(*a*) that it did not know and could not be reasonably expected to know or ascertain the required information, or

(*b*) that the disclosure of the information was prohibited by a law of the State.

(4) An undertaking that commits an offence under *subsection (2)* is liable on summary conviction to a fine not exceeding €5,000.

(5) If, after being convicted of an offence under *subsection (2)* or this subsection, an undertaking continues to fail to do the relevant act, the person commits a further offence on each day or part of a day during which the failure continues and is liable on summary conviction to a fine not exceeding €1,000 for each such further offence. However, if an undertaking is tried for 6 or more such further offences that are alleged to have been committed on successive days, the maximum fine that can be imposed for those offences at the trial is €5,000.**]**

F52**[**Power of Commission to obtain information from undertaking.

F53**[13D.**— (1) The Commission may at any time, by notice in writing, require—

(*a*) an undertaking,

(*b*) a person providing a service in a sector closely related to that of the provision of electronic communications networks or services or associated facilities, or

(*c*) a premium rate service provider,

to provide it with such written information as it considers necessary to enable it to carry out its functions or to comply with a requirement made to it by the Minister under *section 13B*.

(2) A requirement by the Commission under *subsection (1)* may include a requirement that the undertaking or person concerned gather together, generate or obtain information for the purposes of providing it pursuant to that requirement.

(3) Any information provided to the Commission in accordance with *subsection (1)* may be used by the Commission to enable it to carry out any of its functions.

(4) An undertaking or person referred to in *subsection (1)* that—

(*a*) fails to comply with a requirement made under *subsection (1)* within the period specified in the notice or within such extended period as the Commission allows, or

(*b*) in purporting to comply with such a requirement, knowingly or grossly negligently provides misleading, erroneous or incomplete information to the Commission,

commits an offence and is liable on summary conviction to a class A fine.

(5) In proceedings for an offence involving a failure by an undertaking or a person referred to in *subsection (1)* to comply with a requirement made under *subsection (1)*, it is a defence if the undertaking or person establishes that—

(*a*) the undertaking or person did not know and could not reasonably be expected to know, ascertain or obtain the required information, or

(*b*) the disclosure of the information was prohibited by a law of the State.**]]**

F54[Alternative procedure for enforcement of *section 13C* or *13D*.

13E.— (1) As an alternative to bringing a prosecution for an offence against *section 13C* or *13D*, the Minister or the Commission may apply to the High Court to make a compliance order under *subsection (4)*. Such an application is to be by motion.

(2) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the undertaking concerned. On being served with such a copy, the undertaking becomes the respondent to the application.

(3) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (1)*. The Court may not refuse interim or interlocutory relief merely because the Minister or Commission may not suffer damage if relief were not granted pending determination of the application.

(4) On the hearing of an application made under *subsection (1)*, the High Court may make an order requiring the undertaking to comply with the relevant section or may refuse the application.

(5) If the High Court makes an order under *subsection (4)*, it may make such ancillary orders as it considers appropriate.**]**

F55[Power of Commission to share information with Minister

13EA. (1) The Commission may, where the Minister so requests, provide the Minister with any information that the Minister considers may assist the Minister in the formulation of policy relating to electronic communications networks and services and associated facilities.

(2) Where the Commission intends to provide information to the Minister under this section which was obtained by the Commission from a person who is or, at the time the information was obtained from the person, was—

(*a*) an undertaking,

(*b*) a person that provides, or provided, associated facilities, or

(*c*) such other person referred to in *section 13D(1)*, the Commission shall notify the person in writing that the Commission intends to share the information with the Minister and afford the person an opportunity to make representations to it on the matter within a period of 7 days beginning on the date on which such notification is given or such further period as may be specified by the Commission.

(3) The Commission may, taking into account any representations made to it under *subsection (2)*, identify information provided to the Minister as being confidential information.

(4) Where the Minister receives information identified by the Commission as confidential information and the Minister is satisfied that such information is confidential information, he or she shall protect the confidentiality of such information.**]**

F56[Power of Commission to obtain information from postal service provider.

13F.— (1) The Commission may at any time, by notice in writing, require a postal service provider to provide it with such written information as, subject to *subsection (3)*, it considers necessary to enable it to carry out its functions and, in particular, for any of the following purposes:

(*a*) establishing compliance by the postal service provider with the obligations imposed on it by or under the *Communications Regulation Acts 2002 to 2011*;

(*b*) making a designation under section 17 or 18 of the Communications Regulation (Postal Services) Act 2011;

(*c*) conducting a review for any of the purposes of the said section 17 or 18;

(*d*) assessing the contribution (if any) to be made by a postal service provider to a sharing mechanism established under section 36 of the Communications Regulation (Postal Services) Act 2011;

(*e*) assessing the contribution to be made by a postal service provider to the administration costs of the Commission under *section 30(2)*;

(*f*) statistical purposes.

(2) A requirement made under *subsection (1)* shall—

(*a*) specify the information required, and

(*b*) state the purposes for which that information is required, including, where relevant, the statistical purposes for which that information is required.

(3) The nature and extent of the information, the subject of a requirement made under *subsection (1)*, shall be proportionate to the use to which the information is to be put by the Commission in the performance of its functions.

(4) Information shall be provided by a postal service provider pursuant to a requirement made under *subsection (1)* in such form and manner and within such reasonable period as may be specified by the Commission in the notice.

(5) A postal service provider commits an offence if it—

(*a*) fails to comply with a requirement made under *subsection (1)* within the period specified in the notice or within such extended period as the Commission allows, or

(*b*) in purporting to comply with such a requirement, provides to the Commission information that the postal service provider knows to be false or misleading in a material respect.

(6) In proceedings for an offence under *subsection (5)* involving a failure by a postal service provider to comply with a requirement made under *subsection (1)*, it is a defence if the postal service provider establishes—

(*a*) that it did not know and could not be reasonably expected to know or ascertain the required information, or

(*b*) that the disclosure of the information was prohibited by any enactment or rule of law.

(7) A postal service provider who commits an offence under *subsection (5)* is liable on summary conviction to a class A fine.

(8) (*a*) The Commission shall give to the European Commission, upon request, appropriate and relevant information necessary for it to carry out its tasks under the Directive (within the meaning of section 6 of the Communications Regulation (Postal Services) Act 2011).

(*b*) Nothing in *section 24(1)* shall prevent the disclosure of confidential information (within the meaning of *section 24*) by the Commission to the European Commission under this subsection.**]**

F57**[**Alternative procedure for enforcement of section 13F.

13G.— (1) As an alternative to bringing a prosecution for an offence under *section 13F(5)*, the Commission may apply to the High Court to make a compliance order under *subsection (4)*. Such an application is to be by motion.

(2) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the postal service provider concerned. On being served with such a copy, the postal service provider becomes the respondent to the application.

(3) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (1)*. The Court may not refuse interim or interlocutory relief merely because the Commission may not suffer damage if relief were not granted pending determination of the application.

(4) On the hearing of an application made under *subsection (1)*, the High Court may make an order requiring the postal service provider to comply with *section 13F* or may refuse the application.

(5) If the High Court makes an order under *subsection (4)*, it may make such ancillary orders as it considers appropriate.**]**

Composition and procedure of Commission.

14.—(1) The Commission shall consist of at least one member and not more than 3 members.

(2) Each member of the Commission shall be known as a Commissioner for Communications Regulation and is in this Act referred to as a "Commissioner".

(3) Subject to this Act, the Commission may regulate its own procedure.

Appointment and term of office of Commissioners.

15.—(1) Each Commissioner shall be appointed—

(*a*) by the Minister, and

(*b*) on such terms and conditions, including remuneration, as the Minister may fix, with the consent of the Minister for Finance.

(2) Subject to *subsection (5)*, a person shall not be appointed as a Commissioner unless the Civil Service and Local Appointments Commissioners, after holding a competition on behalf of the Commission, have selected him or her for appointment as a Commissioner.

(3) A Commissioner appointed in accordance with *subsection (2)* shall be appointed on a full-time basis for a period of not less than 3 years and not more than 5 years.

(4) Subject to *subsection (5)(c)*, a Commissioner shall not serve more than 2 terms of office as a Commissioner.

(5) (*a*) Notwithstanding this section, the person who, immediately before the establishment day, was the Director, shall be deemed to be appointed as a Commissioner upon that day and shall, subject to *paragraph (b)*, stand appointed on the same terms and conditions on which she was previously retained.

(*b*) *Section 19(5)* applies to the Commissioner deemed appointed under *paragraph (a)* instead of paragraph 8 of the First Schedule to the Act of 1996.

(*c*) The Commissioner deemed appointed under *paragraph (a)* shall, where her term of office, in accordance with that paragraph, expires by effluxion of time, be deemed to have served 2 terms as a Commissioner and, accordingly, she shall not be eligible for re-appointment as a Commissioner.

Appointment of Chairperson of Commission.

16.—(1) Where there is more than one Commissioner, the Minister shall appoint one of them to be the chairperson of the Commission (in this section referred to as "the chairperson").

(2) The Minister shall, when appointing the chairperson, with the consent of the Minister for Finance, fix the terms and conditions, including remuneration, of the chairperson.

(3) The chairperson shall have a casting vote in the case of decisions to be taken by the Commission in the event of a tied vote.

(4) In circumstances where the chairperson is unavailable to perform his or her duties, the Minister shall appoint an acting chairperson to assume the duties of chairperson of the Commission for a stated period not exceeding 6 months. The acting chairperson shall be an existing Commissioner.

Deputy commissioner.

17.—The Commission shall, where there is not more than one Commissioner appointed under *section 15*, designate a member of its staff as a deputy member of the Commission ("deputy commissioner") who shall assume and carry out with

the authority of the Commission all of the functions of the Commission in the absence of the Commissioner.

Resignation and removal of Commissioners.

18.—(1) A Commissioner may resign by giving notice in writing to the Minister of his or her intention to resign and any such resignation shall take effect as of the date upon which the Minister shall have received notice of the resignation.

(2) A Commissioner may be removed from office by the Minister—

(*a*) if, in his or her opinion, the Commissioner has become incapable through ill health of effectively performing his or her duties, or

(*b*) for stated misbehaviour.

(3) In removing a Commissioner, the Minister shall give a statement of the reason or reasons for the removal to the Commissioner and the statement of reasons shall be laid before each House of the Oireachtas.

Restrictions relating to Commissioners.

19.—(1) A Commissioner shall be deemed to have vacated his or her office where he or she—

(*a*) is nominated as a member of Seanad Éireann, or

(*b*) is nominated as a candidate for election as a member of Dáil Éireann, Seanad Éireann or to the European Parliament,

or is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy.

(2) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a Commissioner.

(3) (*a*) A person who is a member of a local authority shall be disqualified from becoming a Commissioner.

(*b*) A Commissioner shall be deemed to have vacated his or her office where he or she becomes a member of a local authority.

(4) A Commissioner shall not hold any other office or employment in respect of which emoluments are payable.

(5) (*a*) For a period of 12 months after a Commissioner has ceased to be a Commissioner, such Commissioner shall not accept any office, consultancy or employment where, in the course of such office, consultancy or employment, the Commissioner could or might use or disclose any confidential information acquired by him or her in the exercise of his or her functions under this Act.

(*b*) Notwithstanding *paragraph (a)*, a person who has held the Office of Director or who was a Commissioner shall not be precluded from—

(i) holding office, or engagement in, any employment in the civil service or any statutory regulatory body, or

(ii) acting as a consultant to any Minister of the Government,

on the basis that the period referred to in that paragraph has not expired.

Staff of Commission.

20.—(1) Every person who immediately before the establishment day is a member of the staff of the Director shall on that day become a member of the staff of the Commission.

(2) (*a*) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Commission, be

brought to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the establishment day.

(*b*) In this subsection, "recognised trade union or staff association" means a trade union or staff association recognised by the Commission for the purposes of negotiations which are concerned with the remuneration or conditions of employment or the working conditions of employees.

(3) The Commission may—

(*a*) with the consent of the Minister and the Minister for Finance, determine the number, grading, remuneration and other conditions of service of staff to be appointed to the Office of the Commission, and

(*b*) appoint to be members of the staff of the Commission such persons as the Commission may determine from time to time.

(4) Where a member of the staff of the Commission has previous service in the civil service, such service shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Minimum Notice and Terms of Employment Acts, 1973 and 1994, the Unfair Dismissals Acts, 1977 to 1993, the Worker Protection (Regular Part-Time Employees) Act, 1991, and the Organisation of Working Time Act, 1997.

Performance of certain functions by staff.

21.—The exercise of functions of the Commission may be carried out by or through any member of the staff or authorised officer of the Commission as the Commission shall deem proper.

Consultants.

22.—(1) The Commission may, from time to time, engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions.

(2) Any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Commission.

Membership of Houses of Oireachtas or European Parliament by staff.

23.—(1) Where a person employed by the Commission is—

(*a*) nominated as a member of Seanad Éireann,

(*b*) elected as a member of either House of the Oireachtas or to the European Parliament, or

(*c*) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

he or she shall upon that happening stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either House or such Parliament.

(2) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the staff of the Commission.

(3) Without prejudice to the generality of *subsection (1)*, that subsection shall be read as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Commission for the purposes of any superannuation benefits.

Prohibition on unauthorised disclosure of information.

24.—(1) Except where otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a Commissioner, member of the staff of, or an adviser or consultant to, or as an authorised officer of, or as an agent of the Commission, unless he or she is duly authorised by the Commission to do so.

(2) In this section, "confidential information" includes information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description.

(3) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(4) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made to the Commission or by or on behalf of the Commission to the Minister.

(5) The Freedom of Information Act, 1997, is amended at the end of Part 1 of the Third Schedule by inserting the following:

(*a*) *"Communications Regulation Act, 2002"* in column (2), and

(*b*) *"Section 24"* in column (3).

F58**[**Protection of whistleblowers.

24A.— (1) A person who makes an appropriate disclosure of information to the Commission about the conduct of F59**[**an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider**]** incurs no civil or criminal liability for having done so.

(2) For the purpose of *subsection (1)*, a person makes an appropriate disclosure of information about the conduct of F60**[**an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider**]** only if—

F61**[**(*a*) the conduct relates to the provision of—

(i) an electronic communications network or service or an associated facility, or

(ii) a postal service,

and**]**

(*b*) the person—

(i) believes on reasonable grounds that the information is true, or

(ii) not being able to form a belief on reasonable grounds about the truth of the information, believes on reasonable grounds that the information may be true and to be of sufficient significance to justify its disclosure with a view to enabling its truth to be investigated by the Commission or by a law enforcement authority that has a legitimate interest in receiving the information (such as the Garda Síochána).

F62**[**(2A) *Subsection (1)* does not apply where the disclosure is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

(3) The Commission may not divulge the identity of a person who has made an appropriate disclosure to it without first obtaining the person's consent, except in so far as it may be necessary to ensure proper investigation of the matters to which the disclosure relates. This subsection applies despite any other enactment or rule of common law to the contrary.

(4) If a person has made an appropriate disclosure to the Commission, the Commission shall, so far as practicable and in accordance with the law, notify the person of the outcome of any investigation into the matters to which the disclosure relates.

(5) The Commission may decline to accept or deal with a disclosure of information made to it by a person about the conduct of F63**[**an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider**]** if it is

satisfied on reasonable grounds that the information is false or misleading or that the disclosure is frivolous or vexatious.**]**

F64**[**Tortious liability of undertaking or associate for victimising whistleblower.

F65**[24B.**—(1) If an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider causes detriment to a person because the person or a third person has made, or threatened to make, an appropriate disclosure of information to the Commission or a law enforcement authority (such as the Garda Síochána) about the conduct of the undertaking, the associate, the association or the postal service provider, the person has a right of action in tort against the undertaking, associate, association or postal service provider, as the case may be.**]**

F66**[**(1A) *Subsection (1)* does not apply where the disclosure is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

(2) In this section, "detriment" includes—

(*a*) injury, damage or loss, or

(*b*) intimidation or harassment, or

(*c*) discrimination, disadvantage or adverse treatment in relation to a person's employment, or

(*d*) a threat of reprisal.**]**

F67**[**Offence to make false disclosure.

24C.—F68**[**(1)**]** A person who makes a disclosure of information about the conduct of F69**[**an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider**]**, knowing the information to be false or misleading commits an offence and is liable—

(*a*) on conviction on indictment, to a fine not exceeding €50,000, or

(*b*) on summary conviction, to a fine not exceeding €5,000.**]**

F68**[**(2) *Subsection (1)* does not apply where the disclosure is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

Disclosure of interests.

25.—(1) Where a Commissioner, a member of the staff of the Commission, or a consultant, adviser or other person engaged by the Commission, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Commission, he or she—

(*a*) shall disclose to the Commission or, where the disclosure is required of a Commissioner and he or she is the only Commissioner, disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,

(*b*) shall neither influence nor seek to influence a decision in relation to the matter,

(*c*) shall take no part in any consideration of the matter, unless there are compelling reasons requiring him or her to do so,

(*d*) if a Commissioner,

(i) shall withdraw from a meeting of the Commission for so long as the matter is being discussed or considered by the Commission, unless there are compelling reasons requiring him or her not to so withdraw, and

(ii) shall not vote or otherwise act in relation to the matter,

and

(*e*) shall prepare and furnish to the Commission a statement in writing of the compelling reasons aforesaid.

(2) For the purposes of this section but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

(*a*) he or she or any nominee of his or her is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,

(*b*) he or she is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter, or

(*c*) he or she is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates.

(3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter, by reason only of an interest of his or hers or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Commission or, where there is only one Commissioner, in the case of that Commissioner, by the Minister.

(5) Where a disclosure is made to the Commission, particulars of the disclosure shall be recorded in the minutes of any meeting concerned.

(6) Where a person, other than a Commissioner, referred to in this section fails to make a disclosure in accordance with this section, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) Where a Commissioner fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

Superannuation of Commissioners.

26.—(1) Subject to *subsection (7)*, the Minister may, with the consent of the Minster for Finance, make a scheme or schemes for—

(*a*) the granting of superannuation benefits to or in respect of a Commissioner ceasing to hold office, or

(*b*) the making of contributions to a pension scheme approved of by the Minister with the consent of the Minister for Finance which has been entered into by a Commissioner.

(2) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under *subsection (1)*, including a scheme amended under this subsection.

(3) If any dispute arises as to the claim of a Commissioner to, or the amount of, any superannuation benefit payable in pursuance of a scheme under *subsection (1)*, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(4) A scheme under *subsection (1)* shall be carried out by the Minister in accordance with its terms.

(5) No superannuation benefit shall be granted by the Minister to or in respect of any Commissioner ceasing to hold office otherwise than—

(*a*) in accordance with a scheme under *subsection (1)*, or

(*b*) as may be approved of by the Minister with the consent of the Minister for Finance under *subsection (1)*.

(6) (*a*) A scheme under *subsection (1)* shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

(*b*) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which the scheme was laid before it in accordance with *paragraph (a)*, annul the scheme.

(*c*) The annulment of scheme under *subsection (1)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.

(7) *Subsection (1)* does not apply to the Commissioner deemed appointed under *section 15(5)(a)*.

F70**[**(8) In the case of the Commissioner deemed appointed under *section 15(15)(a)*, she may, on ceasing to hold office, receive such superannuation benefits as may be determined by the Minister, with the consent of the Minister for Finance, up to but not exceeding those that would have been payable to her under the Superannuation Acts 1834 to 1963 and the Superannuation and Pensions Act 1976 had such cessation been from an established position in the civil service to which those Acts apply.**]**

Superannuation of staff.

27.—(1) The Commission may prepare and submit to the Minister a scheme or schemes or make such other arrangements with the approval of the Minister, given with the consent of the Minister for Finance, for the granting of superannuation benefits to or in respect of such members of the staff of the Commission as it may think fit.

(2) Every scheme under *subsection (1)* shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Every scheme submitted by the Commission to the Minister under *subsection (1)* may, with the consent of the Minister for Finance, be amended or revoked by a subsequent scheme prepared, submitted and approved under *subsection (1)*.

(4) A scheme under *subsection (1)* shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) No superannuation benefit shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than—

(*a*) in accordance with a scheme under *subsection (1)*, or

(*b*) as may be approved of by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme under *subsection (1)*, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(7) As soon as may be after the establishment day, the Commission shall establish a fund, administered by trustees who shall be appointed by the Commission, from which superannuation benefits payable, in respect of a member of the staff of the Commission ceasing to hold office, under a scheme under *subsection (1)* shall be paid.

(8) The assets and liabilities of a superannuation fund established by the Director for his or her staff shall be transferred to a fund referred to in *subsection (7)*.

(9) The Minister for Finance shall agree with the Commission an appropriate contribution, related to reckonable service given before the establishment day, towards the superannuation benefits which may be granted to or in respect of

persons who are transferred from the Office of the Director to the Commission and who have previous service in the civil service, and shall, subject to *subsection (11)*, pay such contribution to the trustees appointed under *subsection (7)* at such times and in such manner as shall be agreed with the Commission.

(10) Where any part of the contribution under *subsection (9)* remains unpaid for any period after the establishment day, interest shall be payable by the Minister for Finance to the trustees appointed under *subsection (7)* at such rate as the Minister for Finance may agree with the Commission in respect of that period on the amount so unpaid.

(11) Payments under *subsection (9)* or *(10)* shall be made not later than 7 years after the establishment day.

(12) (*a*) A scheme under *subsection (1)* shall be laid before each House of the Oireachtas by the Minister for Finance as soon as may be after it is made.

(*b*) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which the scheme was laid before it in accordance with *paragraph (a)*, annul the scheme.

(*c*) The annulment of scheme under *subsection (1)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.

(13) Moneys required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce thereof.

Advances by Minister to Commission.

28.—(1) The Minister may, from time to time, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Commission in the performance of its functions.

(2) The sums to be advanced under *subsection (1)* shall be expended solely for the purpose and exercise of the functions conferred on the Commission by this Act.

(3) The Commission shall pay to the Minister, on every sum advanced to the Commission under this Act, interest from the date of the advance of such sum until the same is repaid at such rate and in such manner as shall be appointed by the Minister at the time of the advance and at such rate as may be determined from time to time, and such rate of interest shall not at any time exceed that fixed by an order under section 20 of the Courts Act, 1981.

Borrowings.

29.—The Commission may, for the purpose of the performance of its functions, borrow money but shall not do so without the consent of the Minister and the Minister for Finance.

Levies and fees.

30.—(1) For the purpose of—

(*a*) meeting expenses properly incurred by the Commission in the discharge of its functions in relation to electronic F71**[**communications,**]**

(*b*) enabling the Minister to pay contributions or other membership charges to international telecommunications F71**[**organisations, F85**[**...**]]**

F86**[***(c)* enabling the Commission to have adequate technical, financial and human resources to carry out the tasks assigned to it, and

(*d*) enabling the Commission to have adequate financial and human resources to enable it to actively participate and contribute to BEREC,**]**

the Commission may make an order imposing a levy on F71**[**providers of electronic communications services and on providers of electronic communications networks which are deemed to be authorised under F87**[**Regulation 6 of the Electronic Communications Code Regulations**]]**.

F74**[**(1A) For the purposes of *subsection (1)*, the expenses of the Commission in relation to the discharge of its functions in relation to electronic communications shall —

F87**[**(*a*) cover, in total, only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation system, the licensing scheme for the licence concerned, the schemes for the grant of the rights of use for numbering resources and specific obligations, and may include costs for international co-operation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of any orders under section 3(6) (inserted by section 11(c) of the Wireless Telegraphy Act 1972) of the Wireless Telegraphy Act 1926 or regulations under section 6 of that Act relating to apparatus for wireless telegraphy for the provision of an electronic communications network or service and administrative decisions, such as decisions on access and interconnection, and**]**

(*b*) be imposed by the Commission on an individual undertaking in an objective, transparent and proportionate manner which minimises additional administrative costs and F87**[**associated**]** charges.**]**

F86**[**(1B)(*a*) For the purposes of *paragraph (1A)(b)* and having regard to—

(i) its objectives under *section 12(1)(a)*,

(ii) the impact of the levy on providers of electronic communications services and providers of electronic communications networks, and

(iii) the need to minimise any distortion or restriction of competition in the market for the provision of the electronic communications concerned,

the Commission may make a determination that such class or classes of electronic communications provider referred to in *subsection (1)* are exempt from an order made under that subsection.

(*b*) A determination by the Commission in accordance with *paragraph (a)* shall only be made:

(i) where the annual turnover of the provider is below an amount specified by the Commission, or

(ii) where the activities of the provider do not reach a market share specified by the Commission, or have a very limited territorial scope.

(*c*) In this subsection, "turnover" means in relation to a body corporate, the turnover of the body in the financial year of the body ending immediately before the financial year in which the determination referred to in *paragraph (a)* is made.**]**

F75**[**(2) Subject to *subsection (11A)*, for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions relating to postal services the Commission may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service.**]**

F76**[**(2A) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its function in relation to premium rate services, the Commission may make an order imposing a levy on premium rate service providers.**]**

(3) Whenever a levy order is made there shall be paid to the Commission by each F77**[**provider of postal services F78**[**referred to in *subsection (2)***]** or each provider of electronic communications services F79**[**or premium rate services**]** or electronic communications networks referred to in *subsection (1)***]** as the case may be such amount as shall be appropriate having regard to the terms of the levy order.

(4) A levy order, including a levy order made under the Act of 1996, may be amended or revoked by the Commission.

(5) Any surplus of levy income over the expenses incurred by the Commission in the discharge of its functions relevant to that levy in a particular financial year shall either—

(*a*) be retained by the Commission to be offset against levy obligations for the subsequent year, or

(*b*) be refunded proportionately to the providers on whom the levy is imposed.

F80**[**(6) Subject to *subsections (7)* and *(8)*, the Commission is entitled to retain for its own use all fees and levies paid to or recovered by it under this Act, a related enactment or any other enactment that expressly provides for a fee or levy to be paid to the Commission.**]**

(7) The Minister may, with the consent of the Minister for Finance, direct the Commission to pay into the Exchequer such sum as he or she may, subject to *subsection (8)*, specify being a sum that, subject to *subsection (8)*, represents the amount by which the aggregate sum received by the Commission in each financial year exceeds the aggregate costs incurred in the administration of its office in that year, less the sum of any surplus referred to in *subsection (5)* and any interim payments made in accordance with *subsection (9)*.

(8) The method of calculation of the surplus referred to in *subsection (7)* shall be such method as may be determined by the Minister, with the consent of the Minister for Finance, after consultation with the Commission, taking into account any reasonable requirements of the Commission for funds to meet expenses.

(9) Where the Commission receives substantial licence fee income, the Minister may, after consultation with the Commission and with the consent of the Minister for Finance, direct the Commission to pay into the Exchequer, such sum which represents an interim payment of the sum referred to in *subsection (7)*.

(10) The Public Offices Fees Act, 1879, does not apply in respect of fees payable to the Commission pursuant to this Act.

F81**[**(11) The Commission shall not impose a levy on providers of—

(*a*) electronic communications for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services or premium rate services,

(*b*) postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of electronic communications services or premium rate services, or

(*c*) premium rate services for the purposes of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services or electronic communications services.**]**

F82**[**(11A) (*a*) A levy imposed pursuant to *subsection (2)* shall be imposed in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges to the Commission.

(*b*) For the purposes of *paragraph (a)* and having regard to—

(i) its objectives under *section 12(1)(c)*,

(ii) the impact of the levy on postal service providers, and

(iii) the need to minimise any distortion or restriction of competition in the market for the provision of the postal services concerned,

the Commission may make a determination that such class or classes of postal service provider referred to in *subsection (2)* are exempt from an order made under that subsection.**]**

(12) The Commission may recover as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable any amount due and owing to it under this section.

F83**[**(12A) The Commission shall, in relation to a levy order, cause to be published, whether in its annual report and accounts referred to in *section 32* or otherwise, an annual overview of its administrative costs and of the total sum of the charges collected under *subsection (1)*.

(12B) The Commission shall, in the case of charges imposed on an annual basis, make appropriate repayments or compensation in the case of overcharging or additional charges in the case of undercharging by a person to whom a charge is imposed in the light of any difference between the total sum of the administrative charges collected under *subsection (1)* and the administrative costs incurred.**]**

(13) In this section "levy order" means an order imposing levy under F84**[**this section**]**.

Strategy statements.

31.—(1) The Commission shall draw up and adopt a strategy statement reflecting its statutory functions.

(2) In drawing up a strategy statement under *subsection (1)*, the Commission shall distinguish between its functions in relation to electronic communications, F88**[**premium rate services,**]** management of radio frequency spectrum and postal services.

(3) A strategy statement shall—

(*a*) be adopted within 6 months of the establishment day and every 2 years thereafter, and

(*b*) take into account the objectives set out in *section 12* and any directions under *section 13*.

(4) The Commission shall present a copy of a strategy statement to the Minister and to such committees of either or both Houses of the Oireachtas as the Minister may, from time to time, direct.

(5) Prior to the adoption of a strategy statement and its presentation to the Minister, the Commission shall undertake a public consultation process on a draft of the strategy statement.

F89**[**Financial year of Commission.

31A.— (1) The financial year of the Commission is—

(*a*) the period of 12 months beginning on 1 July in each year, or

(*b*) if the Commission has published a notice in accordance with *subsection (2)*, the period specified in the notice.

(2) The Commission may, by notice published in *Iris Oifigiúil*, specify as the Commission's financial year a period different from that specified in *subsection (1)(a)* or previously specified under this subsection.**]**

F90**[**Commission to prepare annual action plan.

31B.— (1) Before the end of each financial year of the Commission, the Commission shall—

(*a*) prepare an action plan setting out the principal activities that it proposes to undertake during the ensuing financial year, and

(*b*) present the plan to the Minister and arrange for a copy of the plan to be laid before each House of the Oireachtas.

(2) The action plan shall segregate the relevant activities according to the Commission's functions relating to—

(*a*) regulating electronic communications, and

(*b*) managing the radio frequency spectrum, and

F91**[**(*c*) regulating postal services, and

(*d*) regulating premium rate services.**]**

(3) In preparing the action plan, the Commission shall have regard to its current strategy statement.

(4) As soon as practicable after preparing an action plan, the Commission shall publish it in a form and manner that will enable members of the public to have access to it.**]**

F92**[**Commission to prepare annual financial forecast.

31C.— (1) Before the end of each financial year of the Commission, the Commission shall—

(*a*) prepare a financial forecast showing estimates of the Commission's revenue and expenditure for the ensuing financial year in relation to the activities referred to in the Commission's action plan for that year, and

(*b*) present the forecast to the Minister.

(2) In preparing its annual financial forecast, the Commission shall estimate the amounts of revenue expected to be derived, and the amount of expenditure expected to be made, in respect of each of its functions relating to electronic communications, F93**[**premium rate services,**]** managing the radio frequency spectrum and postal services.

(3) As soon as practicable after preparing its annual financial forecast, the Commission shall publish it in a form and manner that will enable members of the public to have access to it.**]**

F94**[**Report on state of electronic communication markets.

31D. —The Commission shall report annually to the Minister on the state of the electronic communications markets, on the decisions it issues, on its human, financial and technical resources and how those resources are attributed.**]**

Accounts and annual report.

32.—(1) In accordance with good accounting practice, the Commission shall keep, in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it including an income and expenditure account and balance sheet, distinguishing between—

(*a*) its functions relating to electronic communications F95**[**and premium rate services**]**, and

(*b*) its functions relating to postal matters.

(2) (*a*) Within 3 months of the end of each financial year, the Commission shall submit accounts kept under *subsection (1)* in respect of that financial year to the Comptroller and Auditor General for audit.

(*b*) Within 42 days of the accounts being audited by the Comptroller and Auditor General, they shall, together with the report of the Comptroller and Auditor General on those accounts, be presented by the Commission to the Minister.

(*c*) The Minister shall cause copies of the accounts and report referred to in *paragraph (b)* to be laid before each House of the Oireachtas.

(3) The Commission shall, when presenting the report referred to in *subsection (2)(b)* to the Minister, present a report to the Minister in relation to—

(*a*) the performance of its functions in the previous financial year,

(*b*) its proposed work programme for the following year, with reference to progress on the strategy statement, and

(*c*) adherence to its code of financial management under *section 33*.

Code of financial management.

33.—(1) The Commission shall adopt, with the approval of the Minister and the Minister for Finance, a code of financial management and shall arrange for its publication following such approval.

(2) The Commission shall periodically review its code of financial management and revise and republish the code as appropriate.

(3) The Commission shall comment in its annual report on adherence to its code of financial management.

Accountability of Commission to Committees of Oireachtas.

34.—(1) F96**[**Subject to *subsection (3)*, the chairperson of the Commission shall**]**, whenever required by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— ...

(*a*) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by or under statute to prepare,

(*b*) the economy and efficiency of the Commission in the use of its resources,

(*c*) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(*d*) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b)* or *(c)*) that is laid before Dáil Éireann.

(2) F96**[**Subject to *subsection (3)*, from time to time**]**, and whenever so requested, the Commission shall account for the performance of its functions to a Committee of one or both Houses of the Oireachtas.

F97**[**(3) The chairperson of the Commission shall not be required to give evidence in relation to, or account for, the functions of adjudication officers appointed in respect of the Commission in accordance with the Competition Act 2002. **]**

Radio frequency plan.

35.—(1) The Radio Frequency Plan (in this section referred to as "the plan") published under section 3(5) of the Act of 1996 shall on the establishment day continue.

(2) The Commission shall revise and republish the plan from time to time.

(3) The Commission shall, in formulating, revising and implementing the Radio Frequency Plan, comply with any direction given by the Minister under *section 13*.

(4) The plan shall be comprised of a set of tables indicating frequency allocations in the radio spectrum at the date of publication of the plan.

Public service requirements.

36.—(1) The Minister may from time to time specify public service requirements in relation to licences or authorisations mentioned in *subsection (3)*.

(2) Any requirements specified under *subsection (1)* shall be published by the Minister in *Iris Oifigiúil*.

(3) It shall be a condition of any licence or authorisation to provide a network service or system referred to in section 111(2) (inserted by S.I. No. 96 of 1998) of the Postal and Telecommunications Services Act, 1983, that the holder of the licence or authorisation complies with any public service requirements under *subsection (1)*.

(4) In this section, "public service requirements" means essential requirements and requirements relating to conditions of permanence and availability provided

or to be provided by the provider of electronic communications, services, networks or associated facilities.

Regulations relating to wireless telegraphy.

37.—Regulations shall not be made by the Commission under section 6 of the Wireless Telegraphy Act, 1926, other than with the consent of the Minister.

Repeals.

38.—Sections 2 to 6, 11, 12 and 14 of, and the First, Second and Third Schedules to, the Act of 1996 are repealed on the establishment day.

F98[PART 2A

SPECIAL POWERS TO REQUIRE PERSONS TO GIVE EVIDENCE OR PRODUCE DOCUMENTS]

F99[Commission may require persons to give evidence or produce documents.

38A.— (1) If the Commission believes on reasonable grounds that a person may be able to give evidence, or to produce a document, that relates to a matter concerning the performance or exercise of any of the Commission's functions or objectives F100[(other than its functions or objectives relating to postal services)], it may serve on the person a notice requiring the person to appear before it—

(*a*) to give evidence about the matter, or

(*b*) to produce the document for examination.

(2) The notice shall specify—

(*a*) the matter to which the evidence or document relates, and

(*b*) the date, time and place at which the person is required to appear before the Commission.

(3) The notice may require the person concerned to appear before a specified Commissioner or a specified member of the Commission's staff and, if it does so, a reference in this Part to the Commission is to be read as a reference to the Commissioner or staff member concerned.]

F101[Conduct of proceeding under this Part.

38B.— (1) A person who appears before the Commission in compliance with a requirement made under *section 38A* may be required to swear an oath or make an affirmation.

(2) An oath or affirmation must be administered by the Commission.

(3) A person who appears before the Commission under *section 38A* is entitled to be accompanied by a barrister or solicitor or, with the approval of the Commission, any other person.]

F102[Proceeding under this Part to be normally in private.

38C.— (1) Except as provided by this *section*, evidence to be given, or a document to be produced, to the Commission by a person who appears before it in compliance with a requirement made under *section 38A* is to be given or produced in private.

(2) If a person who appears before the Commission in compliance with a requirement made under *section 38A* requests the matter to be dealt with in public, the Commission shall comply with the request.

(3) If the Commission is satisfied that it is desirable in the public interest that the evidence to be given, or the document to be produced, should be given or produced in public, the Commission may direct accordingly.

(4) If the evidence is to be given, or the document is to be produced, in private, the Commission may do either of the following:

(*a*) give directions as to the persons who may be present during the proceeding;

(*b*) give directions preventing or restricting the publication of the whole or any part of the evidence or of matters contained in the document.

(5) Nothing in a direction given under *subsection (4)* may prevent the presence of—

(*a*) a barrister, solicitor or other person who is representing the person who is appearing before the Commission, or

(*b*) a Commissioner or a member of the Commission's staff.

(6) If the evidence is to be given, or the document is to be produced, in private, a person (other than the person required to appear before the Commission, that person's barrister, solicitor or other representative, a Commissioner or a member of the Commission's staff) may be present only if entitled to be present because of a direction given under *subsection (4)(a)*.

(7) A person who contravenes *subsection (6)* commits an offence.**]**

F103**[**Offence to fail to appear before Commission.

38D.— (1) A person commits an offence if, having been required to appear before the Commission in compliance with a requirement made under *section 38A*, the person fails to comply with the requirement, and has not been excused, or released from further attendance, by the Commission.

F104**[**(2) *Subsection (1)* does not apply if—

(*a*) the person has a reasonable excuse, or

(*b*) the requirement under *section 38A* was made in relation to an investigation, hearing or any other matter under Part 2C of the Competition Act 2002.**]]**

F105**[**Offence to refuse to be sworn or to answer question.

38E.— (1) A person appearing before the Commission in compliance with a requirement made under *section 38A*, commits an offence if the person—

(*a*) refuses or fails to swear an oath, or to make an affirmation, on being required to do so by the Commission, or

(*b*) refuses or fails to give evidence in compliance with a requirement made under *section 38A*, or refuses or fails to answer a question put to the person by the Commission in relation to any such evidence, or

(*c*) refuses or fails to produce a document that is required to be produced in compliance with such a requirement.

(2) *Subsection (1)* does not apply if the person has a reasonable excuse.

(3) It is a reasonable excuse for the purposes of *subsection (2)* for a person to refuse or fail to answer a question on the ground that the answer might tend to incriminate the person or to expose the person to a penalty.

(4) It is a reasonable excuse for the purposes of *subsection (2)* for a person to refuse or fail to produce a document on the ground that the production of the document might tend to incriminate the person or to expose the person to a penalty.

(5) *Subsections (3)* and *(4)* do not limit what is a reasonable excuse for the purposes of *subsection (2)*.**]**

F106**[**Protection of persons appearing before Commission under *section 38A*.

38F.— Subject to this Part, a person who appears before the Commission in compliance with a requirement made under *section 38A* has the same protection, and is, in addition to the offences under this Part, subject to the same liabilities, as a witness in proceedings in the High Court.**]**

F107**[**Payment of allowances and expenses to persons who appear before Commission.

38G.— (1) A person who appears before the Commission in compliance with a requirement made under *section 38A* is entitled to be paid such allowances and travelling or other expenses as are payable to or in respect of a witness attending in civil proceedings before the High Court.

(2) All allowances and expenses payable under *subsection (1)* are payable by the Commission.**]**

F108**[**Trial of offences under this Part.

38H.— (1) An offence under this Part is triable summarily.

(2) A person found guilty of an offence under this Part is liable to a fine not exceeding €5,000.**]**

PART 3

ENFORCEMENT

Authorised officers.

39.—(1) The Commission may appoint persons to be authorised officers for the purposes of this Act F109**[**, the Competition Act 2002, the Consumer Protection Act 2007, the Competition and Consumer Protection Act 2014, the Consumer Rights Act 2022, a transferred function or any regulations made under the Act of 1972**]**.

(2) A person appointed under *subsection (1)* shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by *subsection (3)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) For the purposes of the exercise by the Commission of its functions under F110**[**this Act, F111**[**a related enactment,**]** the Competition Act 2002 (other than functions related to obtaining information which may be required in relation to a matter under investigation under relevant competition law), F112**[**the Consumer Protection Act 2007, the Competition and Consumer Protection Act 2014 and the Consumer Rights Act 2022,**]** a transferred function or any regulations made under the Act of 1972**]**, an authorised officer may—

(*a*) enter, at any reasonable time, any premises or place or any vehicle or vessel where any activity connected with the provision of electronic communications services, networks or associated facilities or postal services F113**[**or premium rate services**]** takes place or, in the opinion of the officer takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein,

(*b*) require any such person to produce to him or her any books, documents or records relating to the provision of electronic communications services, networks or associated facilities or postal services F113**[**or premium rate services**]** which are in the person's power or control and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the officer such information as he or she may reasonably require in relation to any entries in such books, documents or records,

(*c*) secure for later inspection any such premises, place, vehicle or vessel or part thereof in which books, documents or records relating to the provision of electronic communications services, networks or associated facilities or postal services F113**[**or premium rate services**]** are kept or there are reasonable grounds for believing that such books, documents or records are kept,

(*d*) inspect and take extracts from or make copies of any such books, documents or records (including, in the case of information in a non-legible form, a copy of or extract from such information in a permanent legible form),

(*e*) remove and retain such books, documents or records for such period as may be reasonable for further examination,

(*f*) require the person to maintain such books, documents or records for such period of time, as may be reasonable, as the authorised officer directs,

(*g*) require the person to give to the officer any information which he or she may reasonably require with regard to the provision of electronic communications services, networks or associated facilities or postal services F113**[**or premium rate services**]**,

(*h*) make such inspections, tests and measurements of machinery, apparatus, appliances and other equipment on the premises or vessel or at the place or in the vehicle as he or she considers appropriate,

(*i*) require any person on the premises or vessel or at the place or in the vehicle having charge of, or otherwise concerned with the operation of, any machinery, apparatus, appliance or other equipment (including data equipment) or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto,

(*j*) take photographs or make any record or visual recording of any activity on such premises or vessel, at such place or in such vehicle.

F111**[**(*k*) require any person who appears to the authorised officer to be in a position to facilitate access to the documents or records stored in any data equipment or computer on the premises, land or vessel or at the place or in the vehicle or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by giving to the authorised officer any password necessary to access the documents or records concerned, or to make the documents or records legible and comprehensible,

(*l*) take possession of and detain any computer, machinery, apparatus, appliance or any equipment or part thereof on the premises, land or vessel or at the place or in the vehicle as he or she considers appropriate.**]**

F114**[**(3A) For the purpose of—

(*a*) obtaining any information which may be required in relation to a matter under investigation under relevant competition law,

(*b*) carrying out any inspection or other fact-finding measure on behalf and for the account of a competition authority of another Member State in accordance with Article 22(1) of the Regulation of 2003,

(*c*) undertaking inspections considered necessary by, or ordered by, the European Commission with which the Commission has been requested to assist in accordance with Article 22(2) of the Regulation of 2003, or

(*d*) assisting the European Commission with an inspection conducted by the European Commission in accordance with Article 20 or 21 of the Regulation of 2003,

an authorised officer may, on production of a warrant issued under *section 40A* or *40B* authorising him or her to exercise one or more specified powers under *subsection (3B)*, exercise that power or those powers.

(3B) The powers referred to in *subsection (3A)* are the following:

(*a*) to enter, if necessary by reasonable force, and search—

(i) any place at which, or any vehicle with which, any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on, or

(ii) any place at which books, documents or records relating to the carrying on of a business referred to in *subparagraph (i)* are being kept,

including, but not limited to, any place occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities;

(*b*) to enter, if necessary by reasonable force, and search any place occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities, being, in either case, a place in respect of which there are reasonable grounds to believe books, documents or records relating to the carrying on of that activity or those activities are being kept;

(*c*) to seize and retain any books, documents, records, computers or any other storage medium in which any record is kept relating to an activity found at any place referred to in *paragraph (a)* or *(b)* and take any other steps which appear to the officer to be necessary for preserving, or preventing interference with, such books, documents, records, computers or media including—

(i) taking or obtaining, in any form, copies of or extracts from such books, documents or records, and

(ii) continuing, at any time, to search books, documents or records so seized, or any copies made thereof or extracts taken therefrom, at a premises other than the premises so entered;

(*d*) to require any person who carries on an activity referred to in *paragraph (a)* and any person employed in connection therewith to—

(i) give to the authorised officer his or her name, home address and occupation, and

(ii) provide to the authorised officer any books, documents or records relating to that activity which are in that person's power or control, and to give to the officer such information as he or she may reasonably require in regard to any entries in such books, documents or records, and where such books, documents or records are kept in a non-legible form to reproduce them in a legible form;

(*e*) to inspect and take copies of or extracts from any such books, documents or records, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;

(*f*) to require a person mentioned in *paragraph (d)* to give to the authorised officer any information he or she may require in regard to the persons carrying on the activity referred to in *paragraph (a)* (including in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and its committee of management or other controlling authority) or employed in connection therewith;

(*g*) to require a person mentioned in *paragraph (d)* to give to the authorised officer any other information which the officer may reasonably require in regard to the activity referred to in *paragraph (a)*;

(*h*) to require any person who appears to the authorised officer to be in a position to facilitate access to documents or records stored in any data equipment or computer, or which can be accessed by the use of that data equipment or computer, to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by—

(i) providing the documents or records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,

(ii) giving to the authorised officer any password necessary to make the documents or records concerned legible and comprehensible, or

(iii) otherwise enabling the authorised officer to examine the documents or records in a form in which they are legible and comprehensible;

(*i*) where the authorised officer considers it necessary to do so in order to preserve for inspection records, documents or any other matter, to secure, for later inspection, and for such period as may reasonably be necessary for the purposes of the exercise of the authorised officer's powers under this section—

(i) documents or records accessed or found during a search under this section, and any data equipment, including any computer, in which those documents or records may be held, and

(ii) a place entered pursuant to this section, or any part of such place.**]**

(4) Where an authorised officer in exercise of his or her powers under F110**[***subsection (3)***]** is prevented from entering any premises or place, an application may be made under *section 40* for a warrant to authorise such entry.

(5) F110**[**An authorised officer, other than where exercising functions in relation to a matter under investigation under relevant competition law, shall not**]** other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant under *section 40* authorising such entry.

(6) A person to whom this section applies who—

(*a*) obstructs, impedes or assaults an authorised officer in the exercise of a power under this section,

(*b*) fails or refuses to comply with a requirement under this section,

(*c*) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce,

(*d*) gives to the Commission or to an authorised officer information which is false or misleading in a material respect, or

(*e*) falsely represents himself or herself to be an authorised officer,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(7) An authorised officer appointed under section 12 of the Act of 1996 and holding office immediately before the establishment day continues in office as if appointed under this section.

F114**[**(8) Where a member of the Garda Síochána arrests, whether in a Garda Síochána station or elsewhere, a person whom he or she, with reasonable cause, suspects of committing or of having committed an offence under section 6 or 7 of the Competition Act 2002 and the person has been taken to and detained in a Garda Síochána station, or if the person is arrested in a Garda Síochána station, has been detained in the station, pursuant to section 4 of the Criminal Justice Act 1984, an authorised officer or officers (but not more than 2 such officers) may, if and for so long as the officer or officers is, or are, accompanied by a member of the Garda Síochána, attend at, and participate in, the questioning of a person so detained in connection with the investigation of the offence, but only if the member of the Garda Síochána requests the authorised officer or officers to do so and the member is satisfied that the attendance at, and participation in, such questioning of the authorised officer or officers is necessary for the proper investigation of the offence concerned.

(9) An authorised officer who attends at, and participates in, the questioning of a person in accordance with *subsection (8)* may not commit any act or make any omission which, if committed or made by a member of the Garda Síochána, would be a contravention of any regulation made under section 7 of the Criminal Justice Act 1984.

(10) An act committed or omission made by an authorised officer who attends at, and participates in, the questioning of a person in accordance with *subsection (9)* which, if committed or made by a member of the Garda Síochána, would be a contravention of any regulation made under section 7 of the Criminal Justice Act

1984 shall not of itself render the authorised officer liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.

F111**[**(11) A reference in this section to a book, document or record is a reference to a book, document or record irrespective of the medium on which it may be stored.**]**

(11) Where a person is before a court charged with an offence under section 6 or 7 of the Competition Act 2002, a copy of any recording of the questioning of the person by a member of the Garda Síochána or authorised officer while he or she was detained in a Garda Síochána station, or such questioning elsewhere, in connection with the investigation of the offence shall be given to the person or his or her legal representative only if the court so directs and subject to such conditions (if any) as the court may specify.

(12) A recording referred to in *subsection (11)* of the questioning of a person shall not be given to the person by the Garda Síochána except in accordance with a direction or order of a court made under that subsection or otherwise.

(13) A court may admit in evidence at the trial of a person in respect of an offence under section 6 or 7 of the Competition Act 2002—

(*a*) a recording by electronic or similar means, or

(*b*) a transcript of such a recording,

or both, of the questioning of the person by a member of the Garda Síochána or authorised officer at a Garda Síochána station or elsewhere in connection with the investigation of the offence.

(14) Any statement made by the person concerned that is recorded in a recording which is admitted in evidence under *subsection (13)* may be admissible in evidence at the trial concerned notwithstanding the fact that—

(*a*) it was not taken down in writing at the time it was made, or

(*b*) that statement is not in writing and signed by the person who made it,

or both.

(15) *Subsections (13)* and *(14)* shall not affect the admissibility in evidence at the trial of a person in respect of an offence of any statement that is recorded in writing made by the person during questioning by a member of the Garda Síochána or authorised officer at a Garda Síochána station or elsewhere in connection with the investigation of the offence (whether or not that statement is signed by the person) and irrespective of whether the making of that statement is recorded by electronic or similar means.

(16) Section 9 of the Criminal Law Act 1976 shall apply in relation to a search carried out by an authorised officer pursuant to a warrant issued under *subsection (3)* or *(3A)* as it applies to a search carried out by a member of the Garda Síochána in the course of exercising his or her powers under that Act.

(17) In this section—

"recording" means a recording on tape of—

(*a*) an oral communication, statement or utterance, or

(*b*) a series of visual images which, when reproduced on tape, appear as a moving picture,

or both;

"Regulation of 2003" means Regulation (EC) No. 1/2003 of 16 December 2002[9] on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

[9] OJ No. L 1,4.1.2003, p. 1-25.

"relevant competition law" has the meaning it has in the Competition Act 2002.**]**

F115**[**Requests for information relating to investigations.

39A. (1) In the course of investigating a suspected infringement of relevant competition law, the Commission, or an authorised officer appointed under *section 39*, may in writing require a person or undertaking under investigation to provide the Commission or officer, as the case may be, with information that is connected to, and reasonably necessary for, the purposes of the investigation.

(2) A requirement under *subsection (1)*—

(*a*) shall specify a period within which it is to be complied with, which period shall be reasonable having regard to the nature of the request, the context in which the information is requested and the circumstances of the person or undertaking of whom the request is made, and

(*b*) shall not require a person of whom it is made to admit to having contravened relevant competition law.

(3) A person or undertaking of whom a requirement under *subsection (1)* is made shall comply with it within the period specified in the requirement.

(4) A person who—

(*a*) provides the Commission or officer, as the case may be, with information that the person knows, or ought reasonably to know, is false or misleading in a material respect, or

(*b*) fails, without reasonable cause, to provide information pursuant to a requirement under *subsection (1)*,

is guilty of an offence.

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

(*a*) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.

(6) In this section, "relevant competition law" has the meaning it has in the Competition Act 2002.**]**

Search warrants.

40.—If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of the Commission exercising its functions under this Act, a transferred function or regulations made under the Act of 1972 is held F116**[**on any land,**]** at any premises or place or on any vessel or in any vehicle, the judge may issue a warrant authorising the authorised officer, accompanied if the officer considers it necessary by other authorised officers or members of the Garda Síochána, at any time or times, within one month from the date of issue of the warrant, on production, if so required, of the warrant, to enter, if need be by reasonable force, F117**[**the land, premises**]**, place, vessel or vehicle and exercise all or any of the powers conferred on an authorised officer F118**[**under *section 39* other than *subsection (3B)* of that section.**]**.

F119**[**Search warrants in relation to certain competition law matters.

40A. Subject to *section 40B*, if a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under the Competition Act 2002 or an infringement, whether or not the infringement is criminal in nature, of relevant competition law (within the meaning of the Competition Act 2002) is to be found in any place, the judge may issue a warrant authorising an authorised officer, accompanied if the officer considers it necessary by other authorised officers or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter and search the place using reasonable force

where necessary, and exercise all or any of the powers conferred on an authorised officer under *section 39(3B)*.**]**

F120**[**Search warrants relevant to assisting the European Commission with an inspection.

40B. Where an authorised officer provides information on oath to a judge of the District Court for the purpose of a warrant being issued in relation to an inspection referred to in *paragraph (d)* of *section 39(3A)*—

(*a*) the information on oath so provided shall include—

(i) a statement to the effect that the information on oath is being provided in relation to an inspection referred to in *paragraph (d)* of *section 39(3A)*, and

(ii) sufficient information to allow the judge of the District Court to discharge his or her functions under the Regulation of 2003,

(*b*) before issuing the warrant, the judge of the District Court shall—

(i) where the warrant would, if issued, authorise the authorised officer to exercise powers under *section 39(3B)* in relation to any place or land other than that referred to in *subparagraph (ii)*, including the home or private vehicle of a director, manager or any member of staff of an undertaking, have regard to the matters referred to in Article 21(3) of the Regulation of 2003, and

(ii) where the warrant would, if issued, authorise the authorised officer to exercise powers under *section 39(3B)* in relation to any place or land of an undertaking or association of undertakings, have regard to the matters referred to in Article 20(8) of the Regulation of 2003,

and

(*c*) the judge of the District Court, shall, where he or she is satisfied as regards the matters referred to in Article 20(8) or 21(3) of the Regulation of 2003, as the case may be, issue a warrant authorising an authorised officer, accompanied if the officer considers it necessary by other authorised officers or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter and search the place or land using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under *section 39(3B)*.**]**

Indemnification.

41.—Where the Commission is satisfied that any member of the staff of the Commission or an authorised officer has discharged his or her duties in pursuance of the functions of the Commission in a *bona fide* manner, the Commission shall indemnify such member of staff or authorised officer, against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

Offences of bodies corporate.

42.—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 a person being a director, manager, secretary or other 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, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

F121**[**Prosecution of summary offences by Commission.

43.— (1) Subject to *subsection (2)*, F122**[**an offence under this Act or a related enactment that may be prosecuted summarily may only be prosecuted summarily**]** by the Commission or by some other person authorised by law to prosecute offences.

F123**[**(2) *Subsection (1)* does not apply to a prosecution for an offence under—

(*a*) *section 53(2)*,

(*b*) the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003),

(*c*) the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003), or

(*d*) section 53, 55, 56(2), 57 or 58 of the Communications Regulation (Postal Services) Act 2011.**]]**

F124**[**(3) (*a*) In this subsection "relevant offence" means an offence under—

(i) section *13C(2)* or *(5), 13D(2) or (5), 13F(5), 24(3), 38C, 38D, 38E, 39(6)* or *45(2)* of this Act,

(ii) section 13 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, or

(iii) section 38(7), 42(4), 56(1) or (2), 57(2) or 58 of the Communications Regulation (Postal Services) Act 2011.

(*b*) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for a relevant offence may be instituted within 12 months from the date on which the offence was committed.**]**

F125**[**(4) Section 1 (1) of the Probation of Offenders Act 1907 shall not apply to an offence under this Act or a related enactment.**]**

Notice by Commission of intention to prosecute, etc.

44.—F126**[**(1) If the Commission believes on reasonable grounds that a person has committed a summary offence under this Act F127**[**(other than an offence under section 53, 55, 56(2), 57 or 58 of the Communications Regulation (Postal Services) Act 2011)**]** or under a related enactment, the Commission may give to the person (or, if the person believed to have committed the offence is a body corporate, to an officer of the body) a notice stating that—

(*a*) the person is alleged to have committed the offence, and

(*b*) if, within 21 days from the date on which the notice was given, the person, as far as is practicable, remedies to the satisfaction of the Commission the matter giving rise to the offence and pays to the Commission €1,500, accompanied by the notice, the person or body will not be prosecuted for the offence.**]**

(2) Where a notice is given under *subsection (1)*—

(*a*) a person to whom it applies may, during the period specified in the notice, make to the Commission the payment specified in the notice, accompanied by the notice,

(*b*) the Commission may receive the payment and issue a receipt for it, and any payment so received shall not be recoverable in any circumstances by the person who made it, and

(*c*) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and, if the default is remedied to the satisfaction of the Commission and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence to which this section applies, the onus of showing that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) All payments made to the Commission in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(5) F128**[**...**]**

(6) *Section 60* (other than *subsection (1)(e)*) applies to a notice given under this section.

(7) F128**[**...**]**

Undertaking not to overcharge or charge for services not supplied.

F129**[45.**(1) A person shall not impose, or purport to impose, a charge for supplying an electronic communications service or electronic communications product to an end-user that exceeds the amount for that service or product specified—

(*a*) in the undertaking's published tariff of charges, or

(*b*) in a written statement previously made or given to the end-user by the undertaking in relation to that supply.

(2) A person shall not impose, or purport to impose, a charge for an electronic communications service or electronic communications product that was—

(*a*) supplied to an end-user but not requested by him or her,

(*b*) requested by an end-user but not supplied to him or her, or

(*c*) neither supplied to, nor requested by, a person.

(3) A person that contravenes *subsection (1)* or *(2)* commits an offence and is liable on summary conviction to a class A fine.

(4) In carrying out an investigation to ascertain whether a person may be contravening or may have contravened *subsection (1)* or *(2)*, the Commission may conduct an audit of the undertaking's billing system.

(5) In this section, "tariff of charges", in relation to a person, includes any list setting out the prices charged by the undertaking for providing electronic communications services or electronic communications products to end-users.**]**

Commission may apply to High Court for order to restrain repeated or apprehended contravention of section 45.

F131**[46.** (1) If it appears to the Commission that a person is contravening or has contravened or, having contravened, may in the future contravene—

(*a*) *section 45(1)* or *(2)*,

(*b*) Regulation 89 or 90 of the European Union (Electronic Communications Code) Regulations 2022, or

(*c*) section 13 (1) of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010,

the Commission may apply to the High Court, by motion, for an order under *subsection (7)* restraining such contravention.

(2) The Commission may conduct an audit of—

(*a*) the billing system, switching system or contract change system of an undertaking, or

(*b*) the billing system of a premium rate service provider,

prior to making an application to the High Court referred to in *subsection (1)*.

(3) The High Court may hear the application under *subsection (1)* only if it is satisfied that a copy of the application has been served on the undertaking or premium rate service provider concerned. On being served with such a copy, that undertaking or provider becomes the respondent to the application.

(4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (1)*.

(5) The High Court may not require the Commission to give an undertaking as to damages as a condition for the granting of an order under *subsection (4)*.

(6) The Court may not refuse interim or interlocutory relief under *subsection (4)* merely because the Commission might not suffer damage if relief were not granted pending determination of the application.

(7) On the hearing of an application made under *subsection (1)*, the High Court may make a restraining order requiring the undertaking or premium rate service provider to cease the contravention concerned and not to repeat it, or, if it is of the opinion that the application is not substantiated, refuse the application.

(8) An application for a restraining order under *subsection (1)* may include or be accompanied by a further application for an order directing the respondent to pay to the Commission a financial penalty of such amount as is proposed by the Commission having regard to the circumstances of the contravention.

(9) On hearing the further application, the High Court may if it is satisfied, having previously been satisfied that the respondent has contravened the provision concerned, and having regard to the circumstances surrounding the contravention, order the respondent to pay to the Commission a financial penalty of such amount as is specified in the order. The amount may be more or less than the amount proposed by the Commission.

(10) The circumstances surrounding the contravention referred to in *subsection (9)* include (but are not limited to) the following:

(*a*) the duration of the contravention;

(*b*) the effect of the contravention on other parties to the relevant decision, and on end-users and on end-users of premium rate services;

(*c*) the submission of the Commission with respect to what it considers to be the appropriate amount;

(*d*) any excuse or explanation for the contravention provided by the respondent.

(11) If the High Court makes an order under this section, it may make such ancillary orders as it considers appropriate.**]**

F132**[**Special powers enabling Minister to make regulations to give effect to European Communities instruments relating to communications matters.

46A.— (1) If regulations specified in *Part 2* of *Schedule 1* (inserted by section 18 of the Communications Regulation (Amendment) Act 2007) that give effect to a provision of the treaties governing the European Communities, or an act, or provision of an act, adopted by an institution of those Communities, create an offence that is triable summarily, and the Minister considers it is necessary to do so for the purpose of giving effect to the provision or act, the Minister may, by regulations, amend the regulations—

(*a*) to provide for the offence to be also triable on indictment, and

(*b*) subject to *subsection (6)*, to make such provision as the Minister considers necessary for the purpose of ensuring that penalties in respect of the offence are effective and proportionate, and have a deterrent effect, having regard to the acts or omissions to which the offence relates.

(2) If regulations specified in *Part 2* of *Schedule 1* that give effect to a provision of the treaties governing the European Communities, or an act, or provision of an act, adopted by an institution of those Communities, prohibit or require the doing of an act, the Minister may, where he or she considers it necessary for the purpose of giving effect to the provision or act, make regulations amending the first-mentioned regulations—

(*a*) to provide that a contravention of the prohibited act, or a failure or refusal to perform the required act, is an offence,

(*b*) to provide for the offence to be triable—

(i) summarily, or

(ii) on indictment, if the Minister considers it necessary for the purpose of giving effect to the provision or act concerned, and

(*c*) subject to *subsection (6)*, to make such provision as the Minister considers necessary for the purpose of ensuring that penalties in respect of the offence are effective and proportionate, and have a deterrent effect, having regard to the acts or omissions to which the offence relates.

(3) The Minister may make regulations for the purpose of giving effect to a provision of the treaties governing the European Communities, or an act, or provision of an act, adopted by an institution of those Communities, relating to—

(*a*) the provision of an electronic communications service, an electronic communications network or an associated facility, or

(*b*) the radio frequency spectrum or national numbering resource, or

(*c*) a postal service.

(4) Regulations under *subsection (3)* may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of those regulations (including provisions repealing, amending or applying, with or without modification, a related enactment).

(5) Regulations under *subsection (3)* may—

(*a*) provide for an offence under those regulations to be triable—

(i) summarily, or

(ii) on indictment, if the Minister considers it necessary for the purpose of giving effect to the provision or act referred to in *subsection (3)*,

and

(*b*) subject to *subsection (6)*, make such provision as the Minister considers necessary for the purpose of ensuring that penalties in respect of the offence are effective and proportionate, and have a deterrent effect, having regard to the act or omission to which the offence relates.

(6) The maximum fine that may be provided for in regulations under this section shall—

(*a*) in respect of the conviction on indictment of a body corporate of an offence under the regulations, not be greater than—

(i) €5,000,000, or

(ii) if 10 per cent of the turnover of the body is greater than that amount, an amount equal to that percentage,

or

(*b*) in respect of the conviction on indictment of any other person of such an offence, not be greater than €500,000.

(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.

(8) 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*) that if, after being convicted of an offence, a person continues to do the prohibited act, or to fail to do the required act, the person commits a further offence on each day or part of a day during which the act or failure continues, and

(*b*) that the person is to be liable on conviction for the further offence—

(i) if tried summarily, to a fine not exceeding €500, or

(ii) if tried on indictment, to a fine not exceeding €5,000.

However, if the regulations concerned provide for a person to be tried summarily for further offences that are alleged to have been committed on successive days, then, irrespective of anything to the contrary in the regulations concerned, the maximum fine that can be imposed for those offences under those regulations is €5,000.

(9) Section 2 of the Ministers and Secretaries (Amendment) (No. 2) Act 1977 does not apply to a power to make regulations for a purpose referred to in subsection *(1)*, *(2)* or *(3)*.

(10) In this section—

"European Communities" and "treaties governing the European Communities" have the same meanings as they have in the European Communities Act 1972; and

"turnover" means, in relation to a body corporate, the turnover of the body in the financial year of the body ending immediately before the financial year in which the offence of which the body has been convicted was committed.**]**

F133**[**Admissibility of expert evidence in proceedings under this Act and related enactments.

46B.— (1) In civil or criminal proceedings under this Act F134**[**, the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023,**]** or a related enactment, the opinion of any witness who appears to the court to possess the appropriate qualifications or experience about the matter to which the witness's evidence relates is admissible in evidence of matters that call for expertise or special knowledge relevant to the proceedings.

(2) A court that admits evidence under *subsection (1)* may, if it is of the opinion that it is in the interests of justice to do so, direct that the use of the evidence is to be limited to specified purposes only.**]**

F135**[**Power of court to order copies of certain documents to be given to juries in certain criminal proceedings.

46C.— In a trial on indictment of an offence under this Act or a related enactment, the trial judge may order copies of any of the following documents to be given to the jury in such form as the judge considers appropriate:

(*a*) any document admitted in evidence at the trial;

(*b*) the transcript of the opening speeches of counsel;

(*c*) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial;

(*d*) the transcript of the whole or any part of the evidence given at the trial;

(*e*) the transcript of the closing speeches of counsel;

(*f*) the transcript of the trial judge's charge to the jury.**]**

F136**[**Presumptions to apply in civil and criminal proceedings under this Act and related enactments.

46D.— (1) The presumptions specified in this section apply in civil and criminal proceedings under this Act F137**[**, the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023,**]** and under the related enactments.

(2) A document purporting to have been created by a person is presumed, unless the contrary is shown, to have been created by the person. Any statement contained in the document is, unless the document expressly attributes the statement to some other person, presumed to have been made by that person.

(3) A document purporting to have been created by a person and addressed and sent to a second person is presumed, unless the contrary is shown, to have been created and sent by the person and received by the second person. Any statement contained in the document is, unless the contrary is shown, presumed—

(*a*) to have been made by the person unless the document expressly attributes the statement to a third person, and

(*b*) to have come to the notice of the second person.

(4) The author of a document retrieved from an electronic database is, unless the contrary is shown, presumed to be the person who ordinarily uses the database in the course of that person's business.

(5) If an authorised officer who has, in the exercise of the officer's powers under this Act, removed one or more documents from a place, gives evidence in proceedings under this Act or a related enactment that, to the best of the officer's knowledge and belief, the material is the property of a specified person, the material is, unless the contrary is shown, presumed to be that person's property.

(6) If, in accordance with *subsection (5)*, an authorised officer gives evidence that material is the property of a specified person and also gives evidence that, to the best of the officer's knowledge and belief, the material relates to a particular trade, profession or other activity carried on by that person, the material is, unless the contrary is shown, presumed to be material that relates to such a trade, profession or activity.

(7) A reference in this section to a document is a reference to anything that is in writing.**]**

F138**[**Admissibility of statements contained in certain documents.

46E.— (1) For the purposes of this section, a person is a competent person if the person is one who might reasonably be expected to have knowledge of the act or omission in question.

(2) A document that contains a statement by a competent person asserting that an act was done or was omitted to be done by a specified person is admissible in evidence in proceedings for an offence under this Act, or under a related enactment, that involves or relates to doing or omitting to do the act, but only if the document satisfies the conditions set out in *subsection (3)*.

(3) The conditions referred to in *subsection (2)* are that the document—

(*a*) came into existence before proceedings for the offence were initiated, and

(*b*) was prepared otherwise than in response to an enquiry made or question put by a Commissioner, a member of the Commission's staff, a member of the Garda Síochána or an authorised officer relative to any aspect of the proceedings.

(4) In estimating the weight (if any) to be attached to a statement contained in a document admitted in evidence in the proceedings, the court shall take into account the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

(5) If a document containing a statement is admitted in evidence under this section—

(*a*) evidence that, if the person making the statement had been called as a witness, would have been admissible as relevant to the person's credibility as a witness is admissible for that purpose, and

(*b*) evidence may, with the leave of the court, be given of any matter that, had the person been called as a witness, could have been put in cross-examination as being relevant to the person's credibility but of which evidence could not be adduced by the cross-examining party, and

(*c*) evidence tending to prove that the person, whether before or after making the statement, made (whether orally or not) a statement that is inconsistent with it is (if not already admissible by virtue of another enactment or a rule of common law) admissible for the purpose of showing that the person had contradicted himself or herself.

(6) This section does not affect the admissibility, in proceedings for an offence under this Act or a related enactment, of a document as evidence of matters stated in it, if the document would be admissible in the proceedings because of the operation of any other enactment or a rule of common law.**]**

PART 4

TRANSITION PROVISIONS

Transfer of property and liabilities of Director to Commission.

47.—(1) The following shall be transferred to the Commission on the establishment day—

(*a*) all property and rights held or enjoyed immediately before the establishment day by the Director, and

(*b*) all liabilities incurred by the Director that are not discharged before the establishment day,

and, accordingly, without any further conveyance, transfer or assignment—

(i) the property so held or enjoyed, both real and personal, vests on the establishment day in the Commission for all the estate, term or interest for which, immediately before the establishment day, was vested in the Director but subject to all trusts and equities affecting the property and capable of being performed,

(ii) the rights so held or enjoyed, are as on and from the establishment day, held and enjoyed by the Commission, and

(iii) the liabilities so incurred are, as on and from the establishment day, the liabilities of the Commission.

(2) All moneys transferred to the Commission by this section that, immediately before the establishment day, are standing in the name of the Director shall, upon the request of the Commission, be transferred into its name.

(3) Every right and liability transferred by this section to the Commission may, on or after the establishment day, be sued on, recovered or enforced by or against the Commission in its own name and it shall not be necessary for the Commission to give notice, to the person whose right or liability is transferred by this section, of the transfer.

Preservation of certain continuing contracts.

48.—(1) Every bond, guarantee or other security of a continuing nature made or given by or on behalf of the Director to any person or given by any person to and accepted by or on behalf of the Director shall continue in force on and after the establishment day.

(2) Every contract or agreement in writing made between the Director and any other person and in force but not fully executed and completed immediately before the establishment day shall continue in force on and after the establishment day.

(3) For the purposes of *subsection (1)* and *(2)*, every bond, guarantee or other security and every contract or agreement in writing to which those paragraphs relate shall be read and have effect as if—

(*a*) the Commission were substituted for the Director as party to it, and

(*b*) the name of the Commission were substituted in it for that of the Director,

and shall be enforceable by or against the Commission.

Adaptation of certain documents.

49.—With effect from the establishment day—

(*a*) every document (including any certificate or licence) made, issued or granted in the exercise of a function transferred by *section 9* shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission, and

(*b*) references to the Director in any Act (other than *section 15(5)(a)*) or in any other document (being an instrument made, issued or granted under a power or authority conferred by any Act) shall, in so far as it was operative immediately before the establishment day and where the context so allows, be read and have effect on and after that day as a reference to the Commission.

Continuation of certain matters by Commission.

50.—Anything commenced before the establishment day by or under the authority of the Director may, in so far as it relates to functions transferred by this Act, be carried on or completed on or after such day by the Commission.

Pending legal proceedings.

51.—F139**[**...**]** Where, immediately before the establishment day, any legal proceedings are pending in any court or tribunal and the Director is a party to the proceedings, the following shall have effect—

(*a*) the Commission shall be substituted for the Director as a party to the proceedings.

(*b*) the name of the Commission shall be substituted in the proceedings for that of the Director, and

(*c*) the proceedings shall not abate by reason of such substitution.

(2) F139**[**...**]**

PART 5

ELECTRONIC COMMUNICATIONS INFRASTRUCTURE ROAD WORKS AND SHARING

Interpretation (*Part 5*).

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

"Act of 2000" means Planning and Development Act, 2000;

F140**[**"authority" means NRA or a road authority, as the case may be;**]**

F141**[**"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)*;**]**

"duct" means a pipe or tube for the carriage of electronic communications infrastructure;

"electronic communications infrastructure" means any part of an electronic communications network;

"emergency roadworks" means roadworks necessary to eliminate or reduce danger or risk to persons or property;

"land" includes seashore, land covered with water (whether inland or coastal), foreshores and any interest or right in or over land;

"network operator" means any person who provides or operates an electronic communications network;

F142**[**"NRA" means National Roads Authority;**]**

F143**[**"physical infrastructure" means infrastructure which is capable of supporting electronic communications infrastructure including buildings, entries to buildings, wiring both inside and outside buildings, masts, antenna, poles, towers and other supporting constructions, ducts, conduits, manholes, cabinets and rights of way over land but does not include electronic communications infrastructure;**]**

"physical infrastructure provider" means a network operator or any other person which allows any part of its physical infrastructure to be used by any other network operator for the provision of electronic communications services;

"physical infrastructure sharing" means the sharing of the use of all physical infrastructure for the purpose of providing electronic communications services;

"planning authority" has the meaning assigned to it by the Act of 2000;

F144**[**"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) In this Part a reference to the Commission shall be construed before the establishment day as a reference to the Director.

(3) For the avoidance of doubt this Part comes into operation on the passing of this Act.

F147**[**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 F148**[**or under *subsection (4A)* where that subsection applies**]**,

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.

F149**[**(4A)(*a*) Subject to this subsection—

(i) where an application is made to an authority by a network operator under this section to carry out roadworks and the authority fails to make a decision in respect of the application within the period of 4 months commencing on the date of receipt of the application, consent is deemed to be granted to the network operator on the day following the expiration of that period of 4 months to carry out the roadworks, and

(ii) where the authority has requested additional information from the applicant regarding the application and the authority fails to make a decision in respect of the application within the period of 4 months from the date on which it receives the applicant's response to the request,

consent shall be deemed to have been granted on the day following the expiration of that period of 4 months to carry out the roadworks.

(*b*) A deemed decision to grant consent under this subsection shall be subject to the conditions that—

(i) in advance of the commencement of those roadworks the network operator concerned informs the authority concerned, and

(ii) the network operator concerned complies with any conditions the authority concerned may decide while the roadworks are in progress or completed.

(*c*) This subsection does not apply in respect of an application where—

(i) within 4 months of receipt of the application, an authority serves notice on the applicant that for exceptional reasons stated in the notice it shall not decide on the application within a period of 4 months commencing on the date of receipt of the application,

(ii) the applicant is not in compliance with any other requirement imposed under law, or

(iii) the applicant gives to the authority in writing his or her consent, for stated reasons, to the extension of the period concerned for making a decision on the application, in which case the period for making the decision shall be extended for the period consented to by the applicant.**]**

(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)* F150**[**or *(4A)***]**, 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 F151**[***section 53(3), (4)* or *(4A)***]**, 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 F151**[***section 53(3), (4)* or *(4A)***]**, 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, which are provided and made available on those roads 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.

(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.**]**

Use of public road for establishment of electronic communications infrastructure overground.

54.—(1) Section 254(1) of the Act of 2000 is amended by inserting after paragraph (*e*) the following paragraph:

"(*ee*) overground electronic communications infrastructure and any associated physical infrastructure,".

(2) A network operator shall be responsible for all costs incurred in the reinstatement of a road to a standard satisfactory to the road authority concerned arising from the opening of the road by the operator for the purpose of—

(*a*) the establishment of overground electronic communications infrastructure, or

(*b*) maintenance, repair, replacement or the addition or removal of overground electronic communications equipment.

(3) This section is without prejudice to section 101D of the Road Traffic Act, 1961.

F153**[**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, which are provided and made available on a national road by an authority for use by network operators, are required to be moved arising from any works undertaken by an authority to improve the 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.**]**

F155**[**Regulations and policy directions to authorities.

56.— (1) The Minister may, with the consent of the Minister for Transport, for the purposes of *sections 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.**]**

Physical infrastructure sharing by infrastructure providers.

57.—(1) This section applies to that part of the infrastructure of a physical infrastructure provider which is used to support electronic communications infrastructure and to no other part of the infrastructure.

(2) A network operator has the right to negotiate an agreement to share physical infrastructure with other infrastructure providers and may, upon the commencement of any negotiations, serve notice on the Commission of such negotiations.

(3) The Commission may, on its own initiative, or shall, if so requested by either party, specify the period within which negotiations on physical infrastructure sharing shall be completed.

(4) Where agreement is not reached within the period specified by the Commission under *subsection (3)*, the Commission shall take such steps as are necessary to resolve the dispute in accordance with the procedures referred to in *subsection (6)*.

(5) With regard to any intervention by the Commission referred to in *subsection (3)* or *(4)*, the Commission may—

(*a*) having carried out a preliminary examination of the matter, decide not to intervene in those negotiations, or

(*b*) discontinue the intervention in those negotiations where the Commission considers that—

(i) the request for intervention is trivial or vexatious, or

(ii) the person making the request has not taken reasonable steps to reach an agreement on physical infrastructure sharing.

(6) The Commission shall resolve a dispute referred to in *subsection (4)* in accordance with procedures established and maintained by it and the procedures shall be made available, on a request being made for that purpose, to interested parties free of charge.

(7) In making a decision in relation to a dispute, the Commission may impose conditions for physical infrastructure sharing and such conditions may include, but not necessarily be limited to—

(*a*) conditions in respect of conformity with the relevant standards relating to establishment, operation, maintenance and repair of electronic communications infrastructure and physical infrastructure,

(*b*) compliance with essential requirements or the maintenance of the quality of electronic communications services or both, or

(*c*) rules for the apportionment of the costs of physical infrastructure sharing,

and the Commission shall notify, in writing, the network operator and physical infrastructure provider, as appropriate, of the reasons for such conditions.

(8) The procedures referred to in *subsection (6)* shall include provisions for public consultation during which all interested parties shall be given an opportunity to express their views.

(9) The Commission, in reaching a decision pursuant to the procedures referred to in *subsection (6)*, shall take into account, *inter alia*—

(*a*) the interests of consumers of electronic communications services,

(*b*) any requirements imposed by an enactment or instrument made thereunder,

(*c*) the public interest, including traffic control and the protection of the environment and of amenities,

(*d*) the desirability of encouraging the sharing of electronic communications infrastructure,

(*e*) the provision of electronic communications services that are not available at the time of the making of the conditions,

(*f*) the availability of alternatives to the physical infrastructure sharing requested,

(*g*) the need to provide access to the market for electronic communications services to network operators,

(*h*) the need to maintain the security of electronic communications networks and the ability of providers of electronic communications services to use different types of electronic communications infrastructure and physical infrastructure,

(*i*) the nature of the request in relation to the resources available to the network operator or physical infrastructure provider concerned to meet that request,

(*j*) the promotion of competition between electronic communications services providers, and

(*k*) the need to maintain a universal service.

(10) In this section, "universal service" means the services which are made available, in accordance with the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999) or any regulations amending or replacing those Regulations, to all consumers of electronic communications services independent of their geographical location.

F156**[**Power of High Court to make compliance orders in respect of conditions imposed under section 57.

57A.— (1) If, in making a decision under *section 57*, the Commission has imposed conditions for infrastructure sharing, and it appears to the Commission that a network operator or physical infrastructure provider to whom the decision relates is failing, or has failed, to comply with any of those conditions, the Commission may apply to the High Court to make a compliance order under *subsection (5)*. Such an application is to be by motion.

(2) However, the Commission may make an application under *subsection (1)* only if—

(*a*) at least one month previously, it has served on the network operator or physical infrastructure provider concerned a notice in writing requiring the operator or provider to comply with a condition imposed by it under *section 57* and has given the operator or provider an opportunity to make representations to it about the matter and to comply with the requirement, and

(*b*) the operator or provider has failed to comply with the requirement.

(3) The High Court may hear the application only if it is satisfied that the Commission has complied with *subsection (2)(a)* and has served a copy of the application on the network operator or physical infrastructure provider concerned. On being served with a copy of the application, that network operator or physical infrastructure provider becomes the respondent to the application.

(4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (1)*. The Court may not refuse interim or interlocutory relief merely because the Commission may not suffer damage if relief were not granted pending determination of the application.

(5) On the hearing of an application made under *subsection (1)*, the High Court may make an order requiring the respondent to comply with the relevant section or may refuse the application.

(6) An application for a compliance order may include or be accompanied by a further application for an order directing the respondent to pay to the Commission a financial penalty of such amount as is proposed by the Commission having regard to the circumstances of the non-compliance.

(7) On hearing the further application, the High Court may, having previously been satisfied that the respondent has not complied with a condition imposed under *section 57* and having regard to the circumstances surrounding the non-compliance, order the respondent to pay to the Commission a financial penalty of such amount as is specified in the order. The amount can be more or less than the amount proposed by the Commission.

(8) The circumstances referred to in *subsection (7)* include (but are not limited to) the following:

(*a*) the duration of the non-compliance;

F157**[**(*b*) the effect of the non-compliance on other parties to the relevant decision, to end-users and to end-users of premium rate services.**]**

(*c*) the submission of the Commission with respect to what it considers to be the appropriate amount;

(*d*) any excuse or explanation for the non-compliance provided by the respondent.

(9) If the High Court makes an order under this section, it may make such ancillary orders as it considers appropriate.**]**

Lopping of trees.

58.—(1) Subject to this section, a network operator, or any person authorised by him or her in that behalf, may lop or cut any tree, shrub or hedge which obstructs or interferes with any physical infrastructure of the network operator.

(2) Before lopping or cutting any tree, shrub or hedge under this section, a network operator shall give to the landowner or occupier of the land on which the tree, shrub or hedge is standing, notice in writing of its intention to do so and, after the expiration of 28 days from the date of such service, the network operator may lop or cut any tree, shrub or hedge where the landowner or occupier has not already done so.

(3) A network operator may, upon the expiration of the period contained in the notice served by the operator under *subsection (2)*, enter the land (with or without vehicles) at any reasonable time.

(4) Where a network operator carries out the cutting or lopping referred to in *subsection (1)*, he or she shall do so in a manner which causes the least damage to property or the environment or amenities.

(5) Where an occupier or landowner lops or cuts any tree, shrub or hedge under *subsection (2)*, the expense incurred by him or her in so doing shall be paid to him or her on demand by the network operator and the amount of such expenses shall be recoverable from the network operator, in default of agreement, as a simple contract debt in any court of competent jurisdiction.

(6) A network operator shall not carry out the cutting or lopping of trees in contravention of an order under section 205 (which relates to the preservation of trees, a group of trees or woodlands) of the Act of 2000.

(7) *Subsection (1)* does not apply to any obstruction of or interference with signals transmitted by means of the radio frequency spectrum.

F159[PART 6

EMERGENCY CALL ANSWERING SERVICE (ECAS)]

F160[Interpretation: *Part 6*.

58A.— In this Part—

"ECAS" means an emergency call answering service operated under a contract entered into under *section 58B*;

"ECAS contract" means a contract for the operation of an emergency call handling service;

"ECAS operator" means the person who operates an emergency call answering service in accordance with a contract entered into under section 58B;

"emergency call" means an electronic communication (such as a telephone call) that is forwarded from an undertaking to the ECAS operator for onward transmission to an emergency service, and includes a call that may not be a genuine one;

"emergency service" means the Garda Síochána, a fire brigade, ambulance service, the Irish Coast Guard or a civil emergency service.**]**

F161**[**Power of Minister to enter into contract for the operation of emergency call answering service (ECAS).

58B.— (1) The Minister may enter into a contract with a person under which the person undertakes to operate an emergency call answering service for a specified period. The contract shall specify terms and conditions for the effective operation of the service and, in particular, shall—

(*a*) specify the maximum call handling fee that the operator is permitted to charge during the first 2 years of the operation of the contract, and

(*b*) specify that the Commission can increase or reduce the amount of that fee after conducting a review in accordance with *section 58D*.

(2) On entering into a contract with a person for the operation of the service, the Minister shall, by notice published in *Iris Oifigiúil*, designate the person as its operator.

(3) While the contract remains in force, the ECAS operator shall provide such information as the Minister or Commission requires to enable the Minister or Commission to perform their respective functions under this or any other enactment.

(4) The Minister may terminate a contract entered into under this section without paying compensation if it is proved that the ECAS operator has failed or is failing to comply with a term or condition of the contract or a requirement imposed under this section.

(5) The Minister may from time to time vary a contract entered into under this section, but, subject to *section 58D*, only with the consent of the ECAS operator.**]**

F162**[**Payment of ECAS call handling fees.

58C.— (1) An entity that forwards emergency calls to the ECAS operator during a month shall, within 45 days after the end of that month, pay to that operator the call handling fees charged by that operator for emergency calls forwarded by the entity during that month.

(2) The maximum amount that the ECAS operator may charge for forwarding an emergency call is—

(*a*) during the first 2 years of the ECAS contract, the amount specified in that contract, and

(*b*) during the remainder of the period for which that contract is in force, the amount determined by the Commission under *section 58D*.

(3) If a call handling fee is not paid by the deadline fixed for payment, the ECAS operator may, by proceedings brought in a court of competent jurisdiction, recover the amount of the fee as a debt due to that operator.

(4) A call handling fee is payable in respect of an emergency call even if the call is not forwarded to the emergency service concerned.**]**

F163**[**Commission to conduct review of maximum call handling fee.

58D.— (1) Not later than 2 months before the second anniversary of the date on which an ECAS contract was entered into, and not later than 2 months before each subsequent anniversary of that date while the contract remains in force, the Commission shall conduct a review of the maximum permitted call handling fee that the ECAS operator can charge for handling emergency calls.

(2) As soon as practicable after conducting a review in accordance with *subsection (1)*, the Commission shall determine the maximum call handling fee that the ECAS operator can charge for handling emergency calls during the period of 12 months beginning with the date of the relevant anniversary of the date on which the ECAS contract was entered into. In determining that fee, the Commission may either confirm the existing maximum call handling fee or, after consulting the ECAS operator, determine a higher or lower maximum fee.

(3) In making a determination under *subsection (2)*, the Commission shall have regard to—

(*a*) the need for the ECAS operator to cover the reasonable costs likely to be incurred by it in operating the service and, in particular, to recover a guaranteed rate of return for providing the ECAS, and

(*b*) the cost likely to be incurred by the Commission in monitoring the ECAS.**]**

F164**[**ECAS operator to pay reasonable costs of Commission in monitoring service.

58E.— (1) The ECAS operator shall pay to the Commission such amount as the Commission certifies in writing as being the amount it has reasonably incurred in monitoring the operation of the ECAS during a specified period.

(2) The ECAS operator shall pay such an amount by such date, or within such period, as the Commission specifies in the certificate or separately notifies in writing to that operator.

(3) If an amount payable under this section is not paid by the deadline fixed for payment, the Commission may, by proceedings brought in a court of competent jurisdiction, recover the amount as a debt due to the Commission.**]**

F165**[**ECAS operator not liable for certain actions done in good faith.

58F.— An ECAS operator is not liable in damages to any person for any act done or omitted to be done in the course of operating the ECAS unless it is established that the act was done or omitted in bad faith or with gross negligence.**]**

F166**[**Commission to report to Minister on operation of service.

58G.— The Commission shall provide the Minister with a report concerning the operation of the ECAS at such times, or within such periods, as the Minister specifies in writing to the Commission. If an event occurs with respect to the operation of the ECAS and the Commission considers that the Minister should be made aware of the event, the Commission shall provide the Minister with a report on the event.**]**

F167**[**Interim measure pending the Minister entering into contract under section 58B.

58H.— (1) In this section—

"call handling fee" means a fee fixed under *subsection (2)*, and includes that amount as varied under that subsection;

"current operator", in relation to the emergency call answering service operating at the commencement of this section, means Eircom plc;

"payment period" means the period beginning with the date on which an order made under *subsection (2)* takes effect and ending with—

(*a*) the date (as publicly notified by the Minister) on which a contract entered into under *section 58B* becomes fully effective, or

(*b*) the day that falls 18 months after the date on which the order takes effect, or such extended period as the Minister may allow,

whichever first occurs.

(2) The Commission may, by notice published in the *Iris Oifigiúil*, fix the amount of the call handling fee payable under *subsection (5)*, and may from time to time, by similar order, vary the amount of that fee. In fixing the amount of the fee, the Commission shall take into account the need to ensure the effectiveness and efficiency of the operator of the service.

(3) An order made under *subsection (2)* ceases to have effect at the end of the payment period.

(4) Before making an order under *subsection (2)* (including an order varying the call handling fee), the Commission shall convene one or more meetings to which it must invite all undertakings that carry on business in the State and such users of electronic communications services as it thinks appropriate.

(5) During the payment period, each entity that forwards emergency calls to the current operator during a month or part of a month that falls during that period,

shall, within 45 days after the end of that month, pay to that operator for each of those calls a call fee fixed in accordance with *subsection (2)*.

(6) If call handling fees are not paid by the deadline fixed for payment, the current operator may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to that operator any amount of fees that remain outstanding.

(7) A call handling fee is payable in respect of an emergency call even if the call is not forwarded to the emergency service concerned.

(8) To enable the Minister to award and enter into an ECAS contract, the current operator shall, so far as it is able to do so, provide the Minister with such co-operation and assistance as the Minister reasonably requires in writing.

(9) If it appears to the Minister that the current operator is failing to provide the level of co-operation and assistance required under *subsection (8)*, the Minister may apply to the High Court to make a compliance order under *subsection (12)*. Such an application is to be by motion.

(10) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the current operator. On being served with such a copy, the current operator becomes the respondent to the application.

(11) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (9)*. The Court may not refuse interim or interlocutory relief merely because the Minister may not suffer damage if relief were not granted pending determination of the application.

(12) On the hearing of an application made under *subsection (9)*, the High Court may make an order requiring the current operator to comply with the relevant requirements or may refuse the application.

(13) If the High Court makes an order under *subsection (12)*, it may make such ancillary orders as it considers appropriate.**]**

F168[PART 7

MISCELLANEOUS PROVISIONS]

Repeals and revocation.

59.—(1) The enactments mentioned in *column (2)* of *Schedule 2* are repealed to the extent mentioned in *column (3)* of that Schedule.

(2) Regulation 12 of the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998) is revoked.

Service of notices.

F169**[60.**(1) Where a notice is required to be given to a person under this Act, the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 or a related enactment, the notice shall be given in one of the following ways:

(*a*) by delivering it to the person (where the person is an individual);

(*b*) by leaving it addressed to the person at a relevant address;

(*c*) by sending it, addressed to the person, to a relevant address by pre-paid registered post or other pre-paid recorded delivery service;

(*d*) by sending it to the person by electronic means in accordance with *subsection (5)*.

(2) In *subsection (1)(b)* and *(c)*, "relevant address" means any of the following:

(*a*) the address at which the person ordinarily resides;

(*b*) an address at which the person carries on business;

(*c*) a postal address at which the person has agreed in writing to receive notices under this Act or a related enactment.

(3) For the purposes of *subsection (2)(a)*, a company registered under the Companies Act 2014, or an existing company within the meaning of that Act, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(4) For the purposes of *subsection (1)(d)*, a notice is sent to a person by electronic means in accordance with this subsection if—

(*a*) it is sent to an email address, fax number, or other electronic contact point, at which the person has agreed in writing to receive notices under this Act, and

(*b*) a record that the email, fax, or other electronic message has been sent is made for the sender by the email system, fax machine, or other electronic system used.

(5) A notice to which *subsection (1)* applies—

(*a*) if given in accordance with *subsection (1)(a)*, is given at the time when it is delivered,

(*b*) if given in accordance with *subsection (1)(b)*, is given at the time when it is left at the relevant address,

(*c*) if given in accordance with *subsection (1)(c)*, is deemed, unless the contrary is proved, to be given at the time when it would be delivered in the ordinary course of the post or other service used, and

(*d*) if given in accordance with *subsection (1)(d)*, is deemed, unless the contrary is proved, to be given at the time stated in the record referred to in *subsection (4)(b)*.

(6) In this section, "notice" includes notification.**]**

F170**[**Privileged legal material

61. (1) Subject to *subsection (2)*, nothing in this Act or a related enactment shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.

(2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act or a related enactment, notwithstanding that it is apprehended that the information is privileged legal material, provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material.

(3) Without prejudice to *subsection (4)*, where, in the circumstances referred to in *subsection (2)*, information has been disclosed or taken possession of pursuant to this Act or a related enactment, the person—

(*a*) to whom such information has been so disclosed, or

(*b*) who has taken possession of it, shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter concerned) apply to the High Court as soon as is reasonably practicable for a determination as to whether the information is privileged legal material.

(4) A person who, in the circumstances referred to in *subsection (2)*, is compelled to disclose information, or from whose possession information is taken, pursuant to this Act, may apply to the High Court for a determination as to whether the information is privileged legal material.

(5) Pending the making of a final determination of an application under *subsection (3)* or *(4)*, the High Court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

(*a*) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,

(*b*) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—

(i) examining the information, and

(ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(6) *Subsections (1)* to *(5)* also apply to irrelevant material and references in those subsections to "privileged legal material" shall be construed as referring to irrelevant material as the case may be.

(7) An application under *subsection (3)*, *(4)* or *(5)* shall be by motion and may, if the High Court directs, be heard otherwise than in public.

(8) In this section—

"computer" includes a personal organiser or any other electronic means of information storage or retrieval;

"information" means information contained in a book, document or record, a computer or otherwise;

"irrelevant material" means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds that it is not relevant to the purpose for which it is sought by the Commission;

"privileged legal material" means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.**]**

F171**[**Freedom of Information Act not to apply to certain confidential information

62. The Freedom of Information Act 2014 shall not apply to information classified as confidential which the Commission receives from the European Commission or from the national regulatory authority or competent authority of another Member State in accordance with Article 20 of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018[8] .**]**

F172**[**Publication of certain notices

63. Before taking any measure in accordance with Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018[9] which will have a significant impact on a relevant market, the Commission shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Commission's statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.**]**

[8] OJ No. L321, 17.12.2018, p. 36
[9] OJ No. L321, 17.12.2018, p. 36

F173[SCHEDULE 1

RELATED ENACTMENTS FOR THE PURPOSES OF THIS ACT]

F173[PART 1]

F173[Acts]

F173[(1) The Wireless Telegraphy Act 1926:

(*a*) section 2;

(*b*) section 2A;

(*c*) section 3(3B) to 3(3C) (except in relation to television sets);

(*d*) section 3(6);

(*e*) section 5 (except in relation to licensing television sets);

(*f*) section 6 (except in relation to licensing television sets);

(*g*) section 7 (except in relation to licensing television sets);

(*h*) section 8 (except in relation to licensing television sets);

(*i*) Section 9(1) (except in relation to aircraft);

(*j*) section 10A(2);

(*k*) section 12(2) (except in relation to television sets or broadcasting matters or aircraft as appropriate);

(*l*) section 13 (except as regards prosecutions for offences under section 3 in respect of television sets);

(2) the Broadcasting Authority Act 1960, section 16(3)(*a*);

(3) the Wireless Telegraphy Act 1972, sections 5, 7 and 8;

(4) the Postal and Telecommunications Services Act 1983:

(*a*) section 5(6) (the functions of the Minister in so far as they relate to the company);

(*b*) F174[...]

(5) the Radio and Television Act 1988, sections 2, 4, 5 and 7;

(6) the Broadcasting and Wireless Telegraphy Act 1988, sections 1, 3, 6, 7, 13, 14 and 20;

(7) the Broadcasting Act 1990, sections 1, 9(1), 12, 16 and 17;

(8) the Irish Aviation Authority Act 1993, section 70;

(9) the Telecommunications (Miscellaneous Provisions) Act 1996, sections 1 and 7 (subsection (5) excepted).]

F173[PART 2]

F173[STATUTORY INSTRUMENTS]

F173**[**(1) Wireless Telegraphy (Business Radio Licence) Regulations 1949 (S.I. No. 320 of 1949);

(2) Telecommunications Tariff Regulation Order 1996 (S.I. No. 393 of 1996) (as amended by S.I. No. 438 of 1999);

(3) European Communities (Mobile and Personal Communications) Regulations 1996 (S.I. No. 123 of 1996);

(4) European Communities (Telecommunications Services Monitoring) Regulations 1997 (S.I. No. 284 of 1997);

(5) European Communities (Telecommunications Infrastructure) Regulations 1997 (S.I. No. 338 of 1997);

(6) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Mobile Telephones) Order 1997 (S.I. No. 409 of 1997);

(7) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Sound Broadcasting Receivers) Order 1972 (S.I. No. 211 of 1972);

(8) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Certain Wired Broadcast Relay Stations) Order 1976 (S.I. No. 200 of 1976);

(9) Wireless Telegraphy (Community Repeater Licence) Regulations 1988 (S.I. No. 83 of 1988);

(10) Wireless Telegraphy (Radio Link Licence) Regulations 1992 (S.I. No. 319 of 1992);

(11) Wireless Telegraphy (Cordless Telephones)(Exemption) Order 1997 (S.I. No. 410 of 1997);

(12) Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations 1997 (S.I. No. 468 of 1997);

(13) European Communities (Electromagnetic Compatibility) Regulations 1998 (S.I. No. 22 of 1998);

(14) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Short Range Business Radios) Order 1998 (S.I. No. 93 of 1998);

(15) European Communities (Interconnection in Telecommunications) Regulations 1998 to 2000, comprising:

(*a*)Regulation 3 of the European Communities (Telecommunications) (Amendment) Regulations, 1998 (S.I. No. 286 of 1998);

(*b*)Regulation 6 of the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999); and

(*c*)the European Communities (Interconnection in Telecommunications) (Amendment) Regulations 1999 (S.I. No. 249 of 1999);

(16) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Satellite Earth Stations for Satellite Personal Communications Services (S-PCS)) Order 1998 (S.I. No. 214 of 1998);

(17) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Citizens' Band (CB) Radios) Order 1998 (S.I. No. 436 of 1998);

(18) Wireless Telegraphy Act 1926 (Section 3) (Exemption of DCS 1800 Mobile Terminals) Order 1999 (S.I. No. 107 of 1999);

(19) Wireless Telegraphy Act 1926 (Section 3) (Exemption of ERMES Paging Receivers) Order 1999 (S.I. No. 108 of 1999);

(20) Wireless Telegraphy (Fixed Wireless Point-to-Multipoint Access Licence) Regulations 1999 (S.I. No. 287 of 1999);

(21) Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations 1999 (S.I. No. 442 of 1999);

(22) European Communities (Conditional Access) Regulations 2000 (S.I. No. 357 of 2000);

(23) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Certain Fixed Satellite Receiving Earth Stations) Order 2000 (S.I. No. 273 of 2000);

(24) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Mobile Satellite Earth Stations for Satellite Personal Communication Systems operating in bands below 1 GHz (S-PCS<1 GHz)) Order 2000 (S.I. No. 173 of 2000);

(25) Wireless Telegraphy (Fixed Satellite Earth Stations) Regulations 2000 (S.I. No. 261 of 2000);

(26) Wireless Telegraphy (Teleport Facility) Regulations 2001 (S.I. No. 18 of 2001);

(27) European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations 2001 (S.I. No. 240 of 2001);

(28) Telecommunications (Miscellaneous Provisions) Act 1996 (Section 6) (Postal Levy) Order 2001 (S.I. No. 282 of 2001);

(29) Wireless Telegraphy Act 1926 (Section 3) (Exemption of certain classes of Land Mobile Earth Stations) Order 2001 (S.I. No. 398 of 2001);

(30) Telecommunications (Miscellaneous Provisions) Act 1996 (Section 6) (Postal Levy) No. 2 Order 2001 (S.I. No. 474 of 2001);

(31) Wireless Telegraphy (Teleport Facility) Regulations 2001 (S.I. No. 18 of 2001);

(32) Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) Regulations 2002 (S.I. No. 345 of 2002);

(33) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Short Range Devices) Order 2002 (S.I. No. 405 of 2002);

(34) Wireless Telegraphy (Mobile Radio Systems) Regulations 2002 (S.I. No. 435 of 2002);

(35) Wireless Telegraphy (Experimenter's Licence) Regulations 2002 (S.I. No. 450 of 2002);

(36) F175**[**...**]**

(37) Telecommunications Tariff Regulation Order 2003 (S.I. No. 31 of 2003);

(38) Wireless Telegraphy (Fixed Wireless Access Local Area Licence) Regulations 2003 (S.I. No. 79 of 2003);

F176**[**(39) the Electronic Communications Code Regulations;**]**

(40) F177**[**...**]**

(41) F177**[**...**]**

(42) F177**[**...**]**

(43) Communications Regulation Act 2002 (Section 30) Levy Order 2003 (S.I. No. 346 of 2003);

(44) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Certain Classes of Fixed Satellite Earth Stations) Order 2003 (S.I. No. 505 of 2003);

(45) Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations 2003 (S.I. No. 529 of 2003);

(46) European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003);

(47) Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 2003 (S.I. No. 675 of 2003);

(48) Communications Regulation Act 2002 (Section 30) Postal Levy Order 2003 (S.I. No. 733 of 2003);

(49) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Low Power Aircraft Earth Stations) Order 2004 (S.I. No. 7 of 2004);

(50) Wireless Telegraphy (Research and Development Licence) Regulations 2005 (S.I. No. 113 of 2005);

(51) Wireless Telegraphy (Third-Party Trial Licence) Regulations 2005 (S.I. No. 114 of 2005);

(52) Wireless Telegraphy Act 1926 (Section 3) (Exemption of certain classes of Land Mobile Earth Stations) Order 2005 (S.I. No. 128 of 2005);

(53) Wireless Telegraphy Act 1926 (Section 3) (Exemption of Receive Only Apparatus for Wireless Telegraphy) Order 2005 (S.I. No. 197 of 2005);

(54) Wireless Telegraphy (Wideband Digital Mobile Data Services) Regulations 2005 (S.I. No. 642 of 2005);

(55) Wireless Telegraphy (Third-Party Business Radio Licence) Regulations 2005 (S.I. No. 646 of 2005);

(56) Wireless Telegraphy (National Point-to-Point and Point-to-Multipoint Block Licences) Regulations 2006 (S.I. No. 296 of 2006);

(57) Wireless Telegraphy (Wireless Public Address System) Regulations 2006 (S.I. No. 304 of 2006);

(58) Wireless Telegraphy (Ship Station Radio Licence) Regulations 2006 F178**[**(S.I. No. 414 of 2006);**]**

F179**[**(59) European Communities (Electromagnetic Compatibility) Regulations 2016 (S.I. No. 145 of 2016);

(60) European Union (Low Voltage Electrical Equipment) Regulations 2016 (S.I. No. 345 of 2016);

(61) European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016 (S.I. No. 391 of 2016);

(62) European Communities (Electromagnetic Compatibility) Regulations 2017 (S.I. No. 69 of 2017);

(63) European Union (Radio Equipment) Regulations 2017 (S.I. No. 248 of 2017);

(64) European Union (Open Internet Access) Regulations 2019 (S.I. No. 343 of 2019);

(65) European Union (Retail Charges for Regulated Intra-EU Communications) Regulations 2020 (S.I. No. 668 of 2020);

(66) European Union (Low Voltage Electrical Equipment) (Amendment) Regulations 2022 (S.I. No. 14 of 2022);

(67) European Union (Mobile Telephone Roaming) Regulations 2022 (S.I. No. 315 of 2022).**]**.**]**

Section 59.

SCHEDULE 2

Enactments Repealed

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)
26 & 27 Vic. c.112	Telegraph Act, 1863	The whole Act
31 & 32 Vic. c.110	Telegraph (Amendment) Act, 1868	The whole Act
32 & 33 Vic. c.73	Telegraph Act, 1869	Sections 23 and 24
41 & 42 Vic. c.76	Telegraph Act, 1878	The whole Act
55 & 56 Vic. c.59	Telegraph Act, 1892	The whole Act
62 & 63 Vic. c.38	Telegraph Act, 1899	The whole Act
8 Edw. 7. c.33	Telegraph (Construction) Act, 1908	The whole Act
9 Edw. 7. c.20	Telegraph (Arbitration) Act, 1909	The whole Act
1 & 2 Geo. 5. c.39	Telegraph (Construction) Act, 1911	The whole Act
6 & 7 Geo. 5. c.40	Telegraph (Construction) Act, 1916	The whole Act

Number 20 *of* 2002

COMMUNICATIONS REGULATION ACT 2002

REVISED

Updated to 31 July 2026

About this Revised Act

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

Communications Regulation Acts 2002 to 2023: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023* (4/2023), s. 1(2)). The Acts in this group are:

- *Communications Regulation Act 2002* (20/2002)
- *Communications Regulation (Amendment) Act 2007* (22/2007)
- *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010)
- *Communications Regulation (Postal Services) Act 2011* (21/2011), other than ss. 62 to 65 and Part 4
- *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015)
- *Communications Regulation (Postal Services) (Amendment) Act 2017* (3/2017)
- *Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023* (4/2023), other than Parts 10, 11

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 1972, may be found linked from the page of the Act or statutory instrument at
www.irishstatutebook.ie.