



Commission for
Communications Regulation

Information Note

Guidelines for the inclusion of a minimum set of requirements in contracts with end users

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1 Executive Summary

Under the Universal Service and End Users Rights Directive, which has been enacted in Irish Law through S.I. 308 of 2003, Electronic Communication Service Providers are required to include a minimum set of terms and conditions in their subscriber contracts. The provision of clear and unambiguous contract terms will allow subscribers to directly enforce their contractual rights with their service provider and therefore provide a significant transparency safeguard. Whilst the regulations set out a framework of information to be included by undertakings within a contract, ComReg is issuing these guidelines in relation to the minimum level of information to be contained in contracts in order to assist undertakings to comply with their obligations under Regulation 17. The guidelines are intended to assist both operators and end users by improving the quality of the information being made available

In devising these guidelines ComReg has consulted with the Office of the Director of Consumer Affairs given its responsibility for enforcing regulations relating to contracts.

2 Introduction

The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 - S.I. No. 308 of 2003 specifies minimum terms that should be included in contracts by undertakings providing connection or access to the public telephone network to residential and business consumers. Regulation 17¹ requires that an undertaking that provides to end users connection and/or access to the public telephone network shall do so in accordance with a contract. An "end-user" as defined by the Framework Regulations² means a user not providing public communications networks or publicly available electronic communications services.

According to Regulation 17(2) such a contract must specify inter alia:

- (a) the identity and address of the supplier,
- (b) services provided, the service quality levels offered, as well as the time for the initial connection,
- (c) the types of maintenance service offered,
- (d) particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained,
- (e) the duration of the contract, conditions for renewal and termination of services and of the contract,
- (f) any compensation and refund arrangements which apply if contracted service quality levels are not met, and
- (g) the method of initiating procedures for settlement of disputes in accordance with Regulation 28.

The information in (a) to (g) above must also be set out in a contract by any undertaking subject to Regulation 17(3) which provides that where a contract is agreed between an end user and a provider of electronic communications services, other than one providing connection and/or access to the public telephone network, that such a contract must also specify the information listed above.

Under Regulation 32(1) ComReg is charged with monitoring compliance with the Regulations including Regulation 17. Section 10 (1)(c) of the Communications Regulation Act, 2002 specifies as one of the functions of ComReg "to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services ...".

As part of a process for implementing the new regulations, which came into effect on the 25th July 2003, ComReg carried out a consultation seeking views on a number of end user protection measures under the regulations. This consultation process culminated in the issue of Decision Notice D16/03. Within the Decision Notice, in accordance with the majority of respondents' requests for clarification on the level of

¹ Full text of Regulation 17 can be found in Appendix A

² A full list of definitions can be found in Regulation 2 of S.I. 307 of 2003 Framework Regulations

detail to be included under the respective headings, ComReg undertook to issue guidelines on the contract requirements set out in Regulation 17 of the Universal Service Regulations.

The purpose of this document is to provide guidelines³ to operators regarding the information which is to be included under Regulation 17 in respect of end-user contracts and are not a legal interpretation of the US Regulations.

ComReg would also like to draw attention to the requirements of existing Community consumer protection legislation relating to contracts, including but not limited to European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 S.I. No. 27 of 1995 and European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations, 2000 S. I. No. 307 of 2000. In addition attention is drawn to S.I. No. 207 of 2001, European Communities (Protection of Consumers in Respect of Contracts made by means of Distance Communications) Regulations, 2001. In addition undertakings should be mindful of relevant data protection legislation and conditions relating to the use of personal information.

³ These procedures are subject to amendment and updating. The Commission is not bound by this document and may amend it from time to time. Nothing in these guidelines is intended to replace or supersede any legal obligations or rights relating to contracts in national law and nothing in these Guidelines should be taken to affect the general law of contract.

3 Provision of Contracts

3.1 Who has to provide a contract?

Regulation 17(1) sets out who has to provide a contract. It states that an undertaking that provides (i) connection (ii) access (iii) both connection and access to the public telephone network⁴ shall do so in accordance with a contract. Regulation 17(2) requires that this contract contain a minimum level of information. Regulation 17(1) and 17(2) provide that end users have a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider.

Regulation 17(3) states that where a contract is agreed between an end users and a provider of electronic communication services, other than one providing (i) connection (ii) access (iii) both to the public telephone network, such a contract shall include the information specified in Regulation 17(2). Therefore where service providers other than direct telephone service providers conclude contracts with end users, the same information should be included in those contracts as well.

3.2 New and Existing Customers

Irrespective of whether there is a written contract in existence or whether there was ever a written contract, as of the 25th July 2003 every end user availing of access, connection or both to the public telephone network has the right to a contract for that service. In addition as of the 25th July 2003 where an end user has a contract with a service provider other than one providing access, connection or both, this contract must include certain information.

Recital 30 of the Universal Service Directive (USD) clearly states that the aim of the provision is to ensure that end users and consumers enjoy a minimum level of legal certainty in respect of their contractual arrangements with all undertakings providing connection and/or access to the public telephone network. The recital notes that measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.

Therefore, in accordance with Recital 30 of the USD; Article 20 of the USD; the transposing regulation, Regulation 17; Section 22(1) of the Interpretation Act, 1937 and relevant Contract Law principles; as of the 25th July 2003 where applicable an end user has the right to have a contract in place, containing the specific information outlined in Regulation 17(2), in relation to their electronic communications service.

3.3 When is the contract to be provided?

In respect of new end-users, the normal law in relation to contracts apply, i.e. in order for terms and conditions to be valid they must be brought to the attention of the

⁴ The public telephone network "means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms for communication, such as facsimile and data."

end-users before any agreement is concluded. This may be done, by giving a written contract to the person or by drawing their attention to where the written terms and condition can be found. These standard terms and conditions should be published in a manner which is sufficiently transparent and easily accessible to end users and a paper copy should be provided to any customer who requests it. ComReg believes that an undertaking, by publishing an example of a standard contract on their website, or providing a paper copy upon request, could assist end users who may be thinking of availing of a service in understanding their contract terms and will ensure that as much information about an operator's contracts is available to prospective subscribers.

With regard to existing subscribers, the requirements under Regulation 17 apply to all end users regardless of when the contract was entered into. ComReg is cognisant of the practicality and cost implications for an operator of reprinting and forwarding its contract to the relevant customers. It is considered sufficient for operators to use a number of means such as bill inserts or SMS to alert their customers to manner in which they can obtain a copy of the standard term contract. All relevant subscribers should be alerted in this manner within six months of the modified standard term contract coming into effect.

4 Requirements under Regulation 17(2)

The contract provided by an undertaking subject to Regulation 17(1) and 17 (3) must include general information about each issue specified in Regulation 17(2) although contracts for different services and with different providers may vary. Such undertakings will also include information about any other matter that may be required under other legislation. Ordinarily, a contract should be expressed in concise, clear and simple language and be clearly legible to the lay reader. The guidelines below are intended to act as a guide to undertakings regarding their obligations under Regulation 17.

It may be necessary to strike a balance between the level of detail included within a contract and the need to ensure that it provides transparent information to subscribers. If a provider considers that the general information required for a specific term is excessively lengthy or detailed, for example, maintenance services offered or prices, the contract may, instead of setting out the information in full:

- (a) Refer to another document prepared by the provider that includes information about the matter and
- (b) Give details of where additional information about the matter may be obtained

In this way, such information becomes part of the contract without compromising its 'user friendliness'. If referring to another document, this document should be provided along with the contract when the end user first takes up the service and with up to date documents being readily available, for example, on the website. This is to ensure complete transparency and guarantee that the end user has all the relevant information to hand when availing of a service.

It is not intended to allow providers to use this option for every item that is required to be specified in the contract by Regulation 17(2) as this would result in a meaningless contract that simply references to other publications of the provider which may not be readily accessible for end users

4.1 Identity and Address of Supplier

This requirement is self explanatory. The purpose of this provision is to allow the supplier to be identified, a postal address for correspondence and an address for the service of notices should a customer wish to sue the company under the contract should be provided. If the company will not deal with personal callers it should be clearly stated that the address is not for such purposes. Accordingly a P.O. Box could be specified for correspondence and the registered office or head office could be specified for service of notices.

For transparency purposes providers may also wish to also include their contact details in terms of telephone number (customer care), email and their website address.

4.2 Services Provided, the service quality levels offered, as well as the time for initial connection

4.2.1 Services Provided

The regulations require that a contract shall specify the services to be provided. The services may be identified in a variety of ways including individual specification or broad examples of the categories of service. This requirement would typically include:

- (i) Services – set out the exact service to be provided and give information on the service itself. For instance, the ability to receive and make telephone calls over the operators network, any additional services which may be available e.g. call answering; emergency calls, maintenance;
- (ii) Eligibility Criteria – the conditions under which the company will provide a service to a customer, for example, if the customers meet the company's credit policy requirements or only if the service in question is available in the customer's area
- (iii) Provision of services – how the services are provided and the responsibilities of respective parties
- (iv) Variations – any circumstances under which the undertaking may vary the service.

4.2.2 Service Quality Levels offered

This provides that the contract should state the quality levels which an end user can expect to receive when availing of the contracted service. The service levels should be clearly stated or if appropriate a separate reference to the existence of such service levels should be included along with clear information about where the document containing these service levels can be found. For example, the undertaking's customer guarantee scheme, which sets out the service levels offered, could be referenced in the contract along with the way in which end users may gain access to or obtain the complete version of the customer guarantee scheme.

Decision Notice D13/03⁵ referred to the levels of service which should be set out by undertakings and providers under the terms of their subscriber contracts. It was stated that these should be specified in a Customer Guarantee Scheme along with the levels of reimbursement or payment that should apply should these not be met. The guarantee should set out inter alia:

- Period in which services will be provided
- Provision of services
- Acknowledgement of receipt of a fault

⁵ Document No. 68/03 Users Rights to Communication Services

- Period within which faults or service difficulties must be rectified
- Provision of appointment dates

Direction 2 of D16/03⁶ requires that these schemes be introduced no later than the 30th January 2004.

4.2.3 *Initial Time for connection*

This section of the contract should set out the supply timeframes a provider will endeavour to meet for initial connection of the service unless particular circumstances make it unreasonable to do so.

For a standard telephone service this should typically set out:

- (a) An indication of the typical installation time to connect the standard telephone service at the end user's premises
- (b) Where circumstances make it impracticable to meet the indicated timeframe, any alternatives which may be offered to the end user

4.3 Types of Maintenance Service Offered

This should set out the maintenance service to be offered by the operator and the responsibilities of the parties in this regard.

4.4 Particulars of Prices and Tariffs

This should enable an end user to determine how they are to be charged and billed along with the means by which up to date information can be obtained on all applicable tariffs. This should typically include:

4.4.1 *Charging*

Charging, including the following matters:

- (a) the types of charges applying to the supply of the designated services;
- (b) the amount or rate of each type of charge or a clear reference to where this charge can be obtained;
- (c) any circumstances that must exist before a charge becomes payable;
- (d) the cost of connection, or reconnection, for the supply of the designated services;
- (e) whether the contracted customer is eligible for a discount, credit or rebate, and, if so the amount of the discount, credit or rebate; and how it is worked out;
- (f) peak and off-peak calling times (where applicable);

⁶ Document No. 68/03 Users Rights to Communication Services

- (g) the amounts of the charges for those times; and
- (h) where up to date information on charges can be obtained by the subscriber

4.4.2 *Billing,*

Billing information should also be clearly outlined, including the following matters:

- (a) How bills are to be issued, the frequency of billing (including any options available to customers);
- (b) the charges (if any) for particular billing options;
- (c) the standard way in which bills will be issued (including any options available to customers);
- (d) the ways of paying a bill;
- (e) the policy (if any) in relation to late billing;
- (f) the penalty (if any) for late payment of a bill.

4.5 Term of the contract

The contract should clearly specify the term for the supply of the designated services. In particular, it should specify the duration of the contract, conditions for termination and renewal of services or the contract. For instance a contract should specify:

- a) if appropriate, the minimum term of the contract;
- b) if appropriate, the minimum period of notice to be given by either party to terminate the contract;
- c) the events that would give either party a right to terminate the contract;
- d) the charge, or method of working out the charge, for terminating the contract before the end of its term;
- e) if appropriate, the terms and conditions applying to the renewal of the contract.

In conjunction with Regulation 17 (4) and 17(5), variations of the terms and conditions of the contract should also be outlined, including the following matters:

- (a) what will happen if there is a proposed modification to the conditions in the contract for the service:

- (b) the minimum period of notice to be given to customers before the proposed modification would take effect;
- (c) the way in which customers will be informed of the proposed modification;
- (d) the end user's rights to withdraw, without penalty, if they do not agree with the modification including, the timeframe (which should be reasonable) and means by which the end user should notify the undertaking or provider of their intention to withdraw
- (e) the place where an up-to-date copy of the contract may be obtained

4.6 Compensation and Refund Arrangements

As stated in Section 4.2.2 undertakings providing connection or access (or both) to the public telephone network to end users are required to state the service quality levels that an end user availing of that service can expect to enjoy. These can be set out in a separate document which is referenced in the contract. The Regulations also require that any compensation or refund arrangements, which apply if contracted services are not met, are specified in the contract. Decision Notice D16/03⁷ required operators to introduce a customer guarantee scheme, stating the level of reimbursement of payments in the settlement of losses incurred which they are committed to pay in the event that service levels specified by the operator are not met. This customer guarantee scheme should be referenced in the contract with clear information as to where the full detail of the reimbursement and refund arrangements can be found.

4.7 Procedures for Settlement of Disputes

This requires that the contract clearly states the method by which a subscriber can initiate a dispute in accordance with the code of practice required under Regulation 28 of S.I. 308 of 2003. A code of practice regime was established under Decision Notice D13/01 which dealt with the matter of Codes of Practice for the Handling of Consumer Complaints by Telecommunications Operators (Document 01/67). This Decision Notice established a framework which required fixed and mobile telecommunications operators to establish the above Codes of Practice and specified certain criteria which must be set out in it. Regulation 28 provides that undertakings must implement a code of practice for handling complaints which must make provision for the following matters, which were required previously under D13/01.

- (a) first point of contact for complainants,
- (b) a means of recording complaints,
- (c) a time frame within which the undertaking concerned shall respond to complaints,

⁷ Document 86/03 User Rights to Communications Services

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- (d) procedures for resolving complaints,
- (e) appropriate cases where reimbursement of payments and payments in settlement of losses incurred in accordance with the Code of Practice required under Regulation 28 and
- (f) retention of records of complaints (including copies of the complaint, any response thereto, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint

The contract must clearly inform subscribers of how they can initiate a complaint under the code of practice by including information such as:

- (g) the process of contacting an undertaking or provider in order to log a complaint
- (h) a reference to the Code of Practice
- (i) where a copy of the code of practice can be obtained and the rights of an end user under Regulation 28 of S.I. 308 of 2003
- (j) the role of ComReg in the resolution of disputes that remain unresolved after completion of the procedures set out in the Code of Practice.

5 Next Steps

All undertakings subject to Regulation 17 are required to amend, where necessary, their existing contracts to ensure compliance with the regulations. ComReg recognises that there are major issues involved in amending contracts and will therefore allow a period of 4 months (i.e. – 23rd February 2004) from the issue of this document before it begins the process of monitoring compliance. It would greatly assist the monitoring process if operators notified ComReg of their compliance with Regulation 17 by 6th February 2004.

As noted in Section 2, Regulation 32 (1)⁸ places the duty of monitoring compliance on ComReg. ComReg will therefore, and in accordance with Regulation 18 of the Authorisation Regulations require operators to provide information to verify compliance. Operators should note that Condition 6.1 of the General Authorisation requires operators to provide such information requested from time to time by ComReg, in the form and at the times specified.

⁸ Full text of Regulation 32 can be found in Appendix A

Appendix A – Legislation

The following extracts from S.I. 308 of 2003 are relevant to this paper and are set out for information purposes. Readers should refer to the regulations themselves European Communities (Electronic Communications Networks and Services) Universal Service and Users' Rights Regulations

Contracts – Regulation 17

17. (1) An undertaking that provides to end-users connection or access or both connection and access to the public telephone network shall do so in accordance with a contract.
- (2) A contract referred to in paragraph (1) shall specify, *inter alia* -
- (a) the identity and address of the supplier,
 - (b) services provided, the service quality levels offered, as well as the time for the initial connection,
 - (c) the types of maintenance service offered,
 - (d) particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained,
 - (e) the duration of the contract, conditions for renewal and termination of services and of the contract,
 - (f) any compensation and refund arrangements which apply if contracted service quality levels are not met, and
 - (g) the method of initiating procedures for settlement of disputes in accordance with Regulation 28.
- (3) Where a contract is agreed between an end-user and a provider of electronic communications services, other than one providing connection or access or both to the public telephone network, such contract shall include the information specified in paragraph (2).
- (4) An undertaking referred to in paragraph (1) or a provider of electronic communications services referred to in paragraph (3) shall, not less than one month prior to the date of implementation of any proposed modification, notify its subscribers to that service –
- (a) of the proposed modification in the conditions of the contract for that service, and
 - (b) their right to withdraw without penalty from such contract if they do not accept the modification.

- (5) A subscriber referred to in paragraph (4) may withdraw from his or her contract with the undertaking or provider, without penalty if he or she does not accept a proposed modification referred to in paragraph (4).

Enforcement – Compliance with obligations- Regulation 32

32. (1) The Regulator shall monitor compliance with these Regulations, other than Regulation 20(3) and (5).
- (2) Where the Regulator finds that a person has not complied with an obligation or requirement under these Regulations or a direction under Regulation 31, the Regulator shall notify the person of those findings and give the person an opportunity to state his or her views or remedy any non-compliance not later than -
 - (a) one month after issue of the notification,
 - (b) such shorter period as is agreed by the Regulator with the person concerned or stipulated by the Regulator in case of repeated breaches, or
 - (c) such longer period as may be specified by the Regulator.
- (3) The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Regulator considers confidential.
- (4) The Regulator may amend or revoke any notification under this Regulation.
- (5) Where, at the end of the period referred to in paragraph (2), the Regulator is of the opinion that a person has not complied with an obligation, requirement or direction under these Regulations, the Regulator may apply to the High Court for such order as may be appropriate by way of compliance with the obligation, requirement or direction. The Court may, as it thinks fit, on the hearing of the application make an order compelling compliance with the obligation, requirement or direction or refuse the application. An order compelling compliance shall stipulate a reasonable period for the person to comply with the obligation, requirement or direction.
- (6) An application for an order under paragraph (5) shall be by motion and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

- (7) The Court shall not deny interim or interlocutory relief solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.
- (8)
 - (a) An application for an order under paragraph (5) or (13) may include an application for an order to pay to the Regulator such amount, by way of financial penalty, as the Regulator may propose as appropriate in the light of the non-compliance.
 - (b) In deciding on such an application, the Court shall decide the amount (if any) of the financial penalty which should be payable and shall not be bound by the sum proposed by the Regulator.
 - (c) Any financial penalty ordered by the Court to be paid by a person under this paragraph shall be paid to and retained by the Regulator as income.
 - (d) In deciding what amount (if any) should be payable, the Court shall consider the circumstances of the non-compliance, including -
 - (i) its duration,
 - (ii) the effect on consumers, users and other operators,
 - (iii) the submissions of the Regulator on the appropriate amount, and
 - (iv) any excuse or explanation for the non-compliance.
- (9) Where the Regulator has evidence of non-compliance by a person with an obligation or requirement under these Regulations or a direction under Regulation 31 that represents an immediate and serious threat to public safety, public security or public health, the Regulator may issue a direction to the person requiring that the use of such apparatus or part of it, as may be specified in the direction, cease with immediate effect or, on or before such date and time, as may be so specified.
- (10) A person to whom a direction has been issued under paragraph (9) shall cease to use the apparatus or part of it to which the direction relates, unless and until such direction has been withdrawn by the Regulator, and shall take such measures as may be specified by the Regulator in the direction to remedy the non-compliance.
- (11) Where the Regulator has evidence of non-compliance by a person with an obligation or requirement under these Regulations or a direction under Regulation 31 that will in the opinion of the Regulator create serious economic or operational problems for undertakings or for users of electronic communications networks or services, the Regulator may issue a direction to the person requiring immediate compliance.

- (12) A person may make representations to the Regulator concerning a requirement made of the person under paragraph (9) or (11) and the Regulator having considered the representations may confirm, amend or withdraw the requirement.

- (13) Where a person fails to comply with a requirement under paragraph (9) or (11), the Regulator may apply in a summary manner to the High Court for an order compelling compliance.