

# Communications Update

## August 2009

### **Communications Regulation (Premium Rate Services) Bill 2009**

On 8 July 2009 the Government published the Communications Regulation (Premium Rate Services) Bill 2009 (the "Bill"). The primary purposes of this Bill are to provide for:

- A transfer of the function of regulating premium rate services from Regtel to the Commission for Communications Regulator (ComReg).
- The licensing of premium rate services by ComReg.
- The creation of offences, provision of penalties for and rights of appeal in relation to the regulation of premium rate services.
- The funding of expenses incurred by ComReg in exercising its regulatory functions.
- The transfer of staff and responsibility for certain legal proceedings from Regtel to ComReg.

The Bill requires a person who intends to provide a specified premium rate service, before doing so, to submit an application to ComReg for a licence to provide that service. The extent of the application of the requirement to apply for a licence will not be known until ComReg makes regulations under Section 5 of the Bill to clarify which premium rate services will constitute specified premium rate services for the purposes of the legislation.

The Bill also provides for:

- the establishment and maintenance of a register of licensed premium rate service providers; and
- ComReg to prepare and publish a code of practice to be following by premium rate service providers.

In addition to the regulation of premium rate services, the Bill also empowers ComReg to issue an emergency direction to an undertaking that provides certain types of wholesale access to another undertaking in the event of the termination of an electronic communication service, by that undertaking, affecting a substantial number of users. This appears to be an attempt to address the issues which arose out of a dispute between eircom and Smart Telecom which occurred a couple of years ago in relation to the payment of certain wholesale access fees by Smart Telecom to eircom, which resulted in a number of Smart Telecom subscribers losing access to the public telephone network.

## Communications (Retention of Data) Bill 2009

The primary purpose of this Bill which was introduced on 6 July 2009 is to give effect and transpose into Irish law Directive No. 2006/24/EC of the European Parliament and the Council (the "Directive") which provides for specific types of data to be retained and retrieved by providers of fixed telephony, mobile telephony and internet services. It will replace Part 7 of the Criminal Justice (Terrorist Offences) Act 2005.

Section 3 of the Bill specifies that a service provider must retain data relating to fixed and mobile telephony for a period of two years. Data relating to internet access, internet email and internet telephony data must be retained for a period of one year. Data relating to unsuccessful call attempts need to be retained only where, in relation to telephone data, the data are stored in the State and, in relation to internet data, the data are logged in the State. The Data Protection Commissioner is the National Supervisory Authority for the purpose of the Bill.

Section 5 of the Bill prevents service providers from accessing data retained in accordance with the Bill except:

- where they have the consent of the person to whom the data relates;
- when complying with requests from An Garda Síochána, the Permanent Defence Forces or the Revenue Commissioners; or
- when complying with a court order or as authorised by the Data Protection Commissioner.

There is also provision for disclosure requests in the Bill. A request for data must come from a member of An Garda Síochána not below the rank of Chief Superintendent, from an officer of the Permanent Defence Forces not below the rank of Colonel or from an officer of the Revenue Commissioners not below the rank of Principal Officer. The senior member of An Garda Síochána can only make a disclosure request as required for:

- the prevention, detection, investigation or prosecution of a serious offence;
- the safeguarding and security of the State;
- the saving of human life.

The senior officer of the Permanent Defence Forces can only make a disclosure request if the data is required to safeguard the security of the State and the senior officer of the Revenue Commissioners can only request data for the prevention, detection, investigation or prosecution of a Revenue offence.

The Bill also provides that a person who believes that a disclosure request is being made in respect of data that relates to that person can apply to a complaints referee to investigate the matter. The referee can investigate whether a disclosure request was made and if so, whether proper procedures were followed. If the referee concludes an infringement has occurred he may direct that the data in the possession of the Gardai, the Permanent Defence Forces or the Revenue Commissioners be destroyed and recommend the Minister for Justice, Equality and Law Reform to pay compensation.

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