

STATUTORY INSTRUMENT

S.I. No. 646 of 2005

Wireless Telegraphy (Third Party Business Radio Licence) Regulations, 2005

Published by the Stationery Office

Dublin

To be purchased through any Bookseller or directly from the Government Publications
Sales Office, Sun Alliance House, Molesworth Street, Dublin 2.

Or by mail order from

Government Publications, Postal Trade Section,

51 St. Stephen's Green, Dublin 2

(Tel: 01 6476834/35/36/37; Fax 01 6476843)

Or through any bookseller

(Prn. A5/1715)

Price € 2.54

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), transferred to the Commission for Communications Regulations by section 9(1) of the Communications Regulation Act, 2002 (No. 20 of 2002) and with the consent of the Minister for Communications, Marine and Natural Resources, pursuant to section 37 of the Communications Regulation Act, 2002 hereby makes the following Regulations:

Citation

1 (1) These Regulations may be cited as the Wireless Telegraphy (Third Party Business Radio Licence) Regulations, 2005.

(2) These Regulations will come into force on the First Day of November 2005.

Interpretation

2. (1) in these Regulations, unless the context otherwise requires:

“Act of 1926” means the Wireless Telegraphy Act, 1926 (No. 45 of 1926);

“Act of 1972” means the Wireless Telegraphy Act, 1972 (No. 5 of 1972);

“Act of 2002” means the Communications Regulation Act, 2002 (No. 20 of 2002);

“Apparatus” means apparatus for wireless telegraphy for any of the following purposes:

- (i) use by the Licensee in conformity with a Licence granted under these Regulations;
- (ii) use by a person with whom the Licensee has entered into a contract relating to the use of the apparatus in conformity with a Licence granted under these Regulations;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 (S.I. 306 of 2003);

“Base Station” means a station located at a fixed location which communicates either with mobile stations or fixed mobile stations and mobile stations;

“Business Radio Service” means a service using radio frequencies for transmitting and/or receiving messages for business purposes between two or more stations, at least one of which must be a mobile station.;

“Commission” means the Commission for Communications Regulation established under the Act of 2002;

“Fixed Mobile Station” means a station located at a fixed location which communicates with a base station and/or mobile stations;

“Harmful Interference” means interference which endangers the functioning of a radionavigation service or other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts any lawfully operating radio-communications service;

“Licence” means a Licence under section 5 of the Act of 1926, to keep, have possession of, install, maintain, work and use apparatus in a specified place in the State;

“Licensee” means any of the following:

- (i) the holder of a Licence (“the Primary Licensee”);
- (ii) a person with whom the Primary Licensee has entered into a contract relating to the use of the apparatus in conformity with a Licence granted under these Regulations (“the Secondary Licensee”);

“Mobile Station” means a station intended to be used while being moved or during halts at unspecified points and includes handportable stations;

“Third Party Business Radio” means radio apparatus used for the provision of business radio services, mainly, but not exclusively, to third parties;

- (2) In these Regulations, unless the contrary intention appears-
 - (a) a reference to a regulation or schedule is a reference to a regulation or schedule of these Regulations
 - (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs;
- (3) In these Regulations, a reference to an enactment or regulation may be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;
- (4) The Interpretation Acts 1937 to 1997 apply to these Regulations.

Application for Licences and Form of Licences

3. (1) An Application for a Licence shall be made to the Commission and shall be in writing in such form as may be determined by the Commission;
- (2) A person who makes an Application under paragraph (1) of this Regulation shall furnish to the Commission such information as the Commission may reasonably require for the purpose of its functions under these Regulations and, if the person, without reasonable cause, fails to comply with this paragraph, the Commission may refuse to grant a Licence to the person;
- (3) The Commission may grant a Licence in accordance with the provisions of Regulation 9 of the Authorisation Regulations;

(4) A Licence shall be in the form specified in the Schedule to these Regulations with such variation (if any) (whether by addition, deletion or alteration) as the Commission may determine from time to time or in any particular case.

Duration and Renewal of Licences

4. (1) A Licence shall (unless it has been revoked) be in force for a maximum period of five years from the date on which it comes into operation and shall then expire.

Conditions of Licences

5. It shall be a condition of a Licence that:

(1) the Primary Licensee will ensure that it complies with the conditions contained within these Regulations and the Schedule;

(2) the Primary Licensee will ensure that it makes payments of the fees as set out in Regulation 7 of these Regulations;

(3) the Primary Licensee will ensure that non-ionising radiation emissions from each radio installation operated under the Licence for the purposes of the Service are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (“ICNIRP”) and that it complies with any radiation emission standards adopted and published from time to time by ICNIRP, any standards of the European Committee for Electrotechnical Standards and any standards which may from time to time be specified by the European Union and that the wireless telegraphy apparatus operated under the Licence is not installed or operated at a location in a manner such as to be the cause of the aggregate non-ionising radiation emissions exceeding the limits specified by the guidelines

published by the ICNIRP and that it complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any radiation emission standards specified by national and European Community law;

(4) the Primary Licensee may not, without the consent of the Commission (which shall not be unreasonably withheld) assign the Licence or any of the powers, duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;

(5) if the address of the Primary Licensee or the person to whom the Licence has been assigned changes, the Primary Licensee or assignee shall, as soon as possible, notify the Commission in writing of the change;

(6) the Primary Licensee complies with any special conditions imposed under section 8 of the Act of 1972 and subject to which this Licence is deemed by subsection (3) of that section to be issued;

(7) where consent is granted under paragraph (4) of this Regulation the Primary Licensee shall ensure that the assignee is contractually obliged to provide to the assignor such details as the Commission may request from time to time;

(8) the Primary Licensee complies with obligations under relevant international agreements relating to the use of apparatus or the frequencies to which they are assigned.

Fees

6. (1) Subject to the methods of payment set out in this Regulation, the fees set out in Regulation 7 are payable in respect of Licences granted by the Commission pursuant to section 5 of the Act of 1926;

(2) Fees shall be paid to the Commission for Communications Regulation by way of banker's draft or such other means and on such terms (including terms as to the place of payment) as the Commission may decide. Where the date of payment falls on a Saturday, a Sunday or a public holiday payment shall be made on or before the last working day before the date of payment;

(3) An amount payable by a person in respect of a fee under these Regulations may be recovered by the Commission from the person as a simple contract debt in any court of competent jurisdiction;

(4) If a Licence is suspended or revoked, the Primary Licensee shall not be entitled to be repaid any part of the fee paid by the Primary Licensee under these Regulations but shall still be liable to pay any sums (including interest) outstanding;

(5) Where payment is not made in due time, then interest shall be payable by the Primary Licensee at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840 (1840 c.105), on the fee or part thereof in respect of the period between the date when such fee or part fell due and the date of payment of such fee or part.

Spectrum Fees

7. The following fees shall apply on the grant of a Licence subject to Regulation 4(2)

Where the Licence is a Licence to which these Regulations apply the Primary Licensee shall pay a fee of €1000 per 12.5 kHz channel per year for the duration of the licence.

Licensee to satisfy all Legal Requirements

8. Nothing in these Regulations shall absolve the Licensee from any requirement in law to obtain such additional consents, permissions, authorisations or licences as may be necessary for the provision the service and for the exercise of his or her rights or discharge of his or her obligations under the Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of the Licence and the provision of the service and the Commission shall bear no responsibility for such costs, expenses or commitments.

Licences to which these Regulations apply

9. These Regulations apply to a Licence to keep, have possession of, install, maintain, work and use apparatus for the purpose of third party business radio services.

Schedule

Regulation 3

WIRELESS TELEGRAPHY ACT, 1926

Section 5

Third Party Business Radio Licence

Licence No. _____ **Fee** _____

Licensee _____

Postal Address

In Full _____

The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and Section 9(1) of the Communications Regulation Act, 2002 (No. 20 of 2002) grants to the Licensee specified, authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in Part One of this licence subject to the Licensee observing the conditions contained in Regulation 5 of the Wireless Telegraphy (Third Party Business Radio Licence) Regulations, 2005 (S.I. No. of 2005)

Date+ Stamp

From _____ *to* _____

Issuing Officer _____

For and on behalf of the Commission for Communications Regulation

Part One

Statement of authorised Apparatus

To include:

Description of apparatus

Places at which the Licensee is authorised to keep and have possession of the Apparatus

Technical restrictions

Details of spectrum

And, where applicable,

Roll-out plan

Minimum Loading Criteria

Commitments made in course of comparative evaluation

GIVEN under the official seal of the Commission for Communications Regulation, this 12th day of October, 2005

For and on behalf of the Commission for Communications Regulation

The Minister for Communications, Marine and Natural Resources consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Communications, Marine and Natural Resources

this 6th day of October, 2005

Noel Dempsey T.D.

Minister for Communications, Marine and Natural Resources

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations provide for the issue of Licences for apparatus for wireless telegraphy used solely for the purpose of third party business radio, for the regulation of radio apparatus and for the payment of fees by persons granted Licences for that purpose.