

STATUTORY INSTRUMENTS

S.I. No. 442 of 1999

REGULATIONS

entitled

Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1999

Published by the Stationery Office

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



L.S.

Price: £2.40
(Pn. 8046)

Postage: 0.72p

I, Etain Doyle, Director of Telecommunications Regulation, in exercise of the powers conferred on me by section 6(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), and, section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), and pursuant to subsection (8) of the said section 4 and the Transport, Energy and Communications (Alteration of Name of Department and Title of Minister) Order, 1997 (No. 299 of 1997), with the consent of the Minister for Public Enterprise hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1999.

Interpretation

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

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

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

“the Act of 1983” means the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983);

“the Acts” means the Wireless Telegraphy Acts, 1926 to 1988;

“Apparatus” means apparatus for wireless telegraphy operating in the 900 MHz frequency band and/or in the 1800 MHz frequency band for the purpose of the provision of a mobile telephony service and, in relation to a Licence, means apparatus to which the Licence relates;

“Authorised Officer” means a person appointed under Regulation 7 of these Regulations to be an authorised officer;

“the Director” means the Director of Telecommunications Regulation;

“GSM and TACS Regulations” means the Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1997 (S.I. No. 468 of 1997);

“GSM mobile telephony service” means a service consisting of the provision of a mobile telephony service of the kind referred to in the Annex to Council Recommendation 87/371/EEC of 25 June 1987*, that is to say, a pan-European, cellular, digital, land-based, mobile telephony service provided in the 900 MHz frequency band and/or a GSM1800 cellular, land based, public mobile telephony service of the kind referred to in the European Commission Communication of 23rd November 1994, and conforming with the standard known as GSM and with the GSM Technical Specifications of the European Telecommunications Standards Institute, published by the National Standards Authority of Ireland and providing international roaming capability;

“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 granted to the holder of a licence under section 111(2) of the Act of 1983 authorising the provision of a mobile telephony service;

“Licensee” means the holder of a Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licenses) Regulations, 1998 (S.I. No. 96 of 1998);

“mobile telephony service” means a GSM mobile telephony service or a TACS mobile telephony service;

“Service” means the mobile telephony service authorised by a licence under section 111(2) of the Act of 1983 held by the Licensee;

“TACS mobile telephony service” means a service consisting of the provision and operation of a cellular, land-based, mobile telephony service in the 900 MHz frequency band using analogue technology and conforming with the standard known as Total Access Communications System Mobile Station - Land Station Compatibility Specification Issue 4, Amendment 2, February, 1995, published by the Radio Communications Agency, London.

* OJ No J 196, 17/7/87, p. 35

- (2) In these Regulations, a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation.
- (3) The Interpretation Act, 1937 (No. 38 of 1937), applies to these Regulations.

Application for Licences and Form of Applications and Licences

3. (1) An application for a Licence shall be made to the Director and shall be in writing in such form as may be determined by the Director or in a form to the like effect.
- (2) A person who makes an Application under paragraph (1) of this Regulation shall furnish to the Director such information as the Director may reasonably require for the purpose of his or her functions under these Regulations and, if the person, without reasonable cause, fails to comply with this paragraph, the Director may, in accordance with Regulation 8(4)(c) of the Licensing Regulations, refuse to grant a Licence to the person.
- (3) The Director may grant a Licence in accordance with the provisions of Regulation 8 of the Licensing Regulations.
- (4) Subject to Regulation 6 of these Regulations, 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 Director may determine from time to time or in any particular case.

Duration and Renewal of Licences

4. (1) A Licence that has not been renewed shall (unless it has been revoked) be in force for the period of one year from the date on which it is expressed to come into operation and, unless renewed, shall then expire.
- (2) A Licence that has been renewed shall (unless it has been revoked) be in force for the period of one year from the day following the expiration of the last previous period during which it was in force and, unless renewed, shall then expire.

- (3) On application in writing in that behalf by or on behalf of a Licensee to the Director before the expiration of his or her Licence, the Director may, by notice in writing given to the Licensee or sent to the Licensee at the address of the Licensee specified in the Licence or notified to the Director by the Licensee in accordance with the Licence, renew the Licence for the period of one year from the day following the expiration of the last previous period during which it was in force.
- (4) A Licence may be renewed from time to time by the Director under paragraph (3) of this Regulation.
- (5) Notwithstanding paragraphs (1) and (2) of this Regulation, a Licence that is granted or renewed on or after the 16th day of May, 2010, shall, where the Licensee was the holder of a licence under the GSM and TACS Regulations, expire on the 15th day of May, 2011.

Conditions of Licences

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

- (a) that the Apparatus shall be used only for the purpose of the provision of the Service;
- (b) that the Apparatus shall be used only on such radio frequency channels as may be specified in the Licence and those channels shall be used in an efficient manner;
- (c) that the Licensee shall ensure that the Apparatus is not used in a manner that could infringe the privilege of the Minister for Public Enterprise under the Telegraph Act, 1869;
- (d) that, if the Director:-
 - (i) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and

- (ii) gives to the Licensee or sends to the Licensee, at the address of the Licensee specified in the Licence or notified to the Director by the Licensee in accordance with the Licence, a notice requiring that the Apparatus or the use thereof be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hours on such days, as may be specified in the notice,

the Licensee shall ensure that the requirement is complied with;

- (e) that the Licensee shall not, without the consent of the Director (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;
- (f) that the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the Service are not authorised to receive from being received by means of the Apparatus;
- (g) that, if any such communication or information as aforesaid is so received, the Licensee shall not, and shall endeavour to ensure that employees and agents of the Licensee do not:-
 - (i) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of the staff of the Director); or
 - (ii) reproduce it in writing or otherwise copy it or make use of it;
- (h) that the Licensee shall ensure that the installation of the Apparatus is effected, and its maintenance and operation is carried on, in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not interfere with any other apparatus for wireless telegraphy the subject of a Licence under section 5 of the Act of 1926;

- (i) that the Licensee shall ensure that the erection and positioning of Apparatus consisting of antennae and support structures for antennae is effected in accordance with law;
- (j) that the Licensee shall ensure that non-ionising radiation emissions from each radio installation associated with the mobile telephony network operated by the Licensee 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 specified by the European Union;
- (k) that the Licensee shall ensure that access to the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access;
- (l) that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Director in writing of the change; and
- (m) that the 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.

Enforcement, amendment, revocation and suspension

- 6. (1) The Director may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made in accordance with Regulation 8(4)(a), and Regulation 8(6), of the Licensing Regulations, and any other requirements under applicable national or European Community law.
- (2) Without prejudice to paragraph (1) of this Regulation, the Director may, in accordance with Regulation 8(6) of the Licensing Regulations, suspend or revoke the Licence in any of the following circumstances:-

- (i) where a condition of the Licence (including a condition imposed under section 8 of the Act of 1972) is contravened;
 - (ii) where the Licensee fails or refuses to comply with a direction of the Director or hinders or obstructs an Authorised Officer in the performance of his or her functions;
 - (iii) where the Licensee contravenes any of the Acts or any regulations made thereunder;
 - (iv) where the Application made by the Licensee is or was false or misleading in a material respect;
 - (v) where, in the opinion of the Director, such revocation or suspension is required for the purpose of complying with national or European Community law;
 - (vi) where the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;
 - (vii) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed.
- (3) Where the Director is of the opinion that, in the interest of the efficient and orderly use of apparatus for wireless telegraphy or radio frequency spectrum, it is desirable to do so, he or she may, in accordance with Regulation 8(6) of the Licensing Regulations:-
- (i) suspend the Licence, in so far as it applies to a particular part of the Apparatus kept at a particular place, specified in writing to the Licensee, for such period as may be specified in the notice; or

- (ii) amend a provision of the Licence in such manner as may be specified in writing to the Licensee; or
 - (iii) revoke the Licence.
- (4) Without prejudice to paragraph (1) of this Regulation, at the request of the Licensee, the Director may, if he or she considers it appropriate to do so, amend the Licence by adding to, deleting from or altering the radio frequency spectrum specified in the Licence on which the Apparatus may be used. Any such amendment shall be effected by notice in writing from the Director specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Director pursuant to the Licence.

Powers of Authorised Officers

7. (1) The Director may appoint such member or members of the staff of the Director as he or she considers appropriate to be Authorised Officers for the purposes of these Regulations.
- (2) An Authorised Officer, when exercising any power pursuant to this Regulation, shall, if so requested by any person affected, produce a copy of his or her warrant of appointment as an Authorised Officer to the person.
- (3) An Authorised Officer may:-
- (a) enter at all reasonable times any premises where he or she reasonably suspects that any Apparatus to which a Licence relates is kept or any business relating to a Licence is carried on and inspect the premises and any such Apparatus found on the premises and any records, in whatever form kept, so found relating to the Apparatus or that business and test any such Apparatus;
 - (b) direct any person whom he or she finds on premises entered pursuant to subparagraph (a) to give to him or her any information in his or her possession or procurement which he or she may reasonably request for the purposes of his or her functions under this Regulation; and

- (c) take copies of, or of extracts from, any such records so found.
- (4) If an Authorised Officer reasonably believes that an emergency exists, he or she may direct a Licensee to:-
 - (a) modify, in such manner as may be specified in the direction, the operating characteristics of any Apparatus to which the Licence relates; or
 - (b) cease operating any such Apparatus during such period as may be specified in the direction.

Fees

- 8. (1) Subject to paragraph (2) of this Regulation, the following fees are hereby prescribed in relation to Licences for the purposes of section 6 of the Act of 1926:-
 - (a) If the Licence relates to Apparatus for use for the provision of a GSM mobile telephony service then the Licensee shall pay:-
 - (i) in respect of each 200 KHz duplex radio frequency channel in the 900 MHz frequency band specified in the Licence, a fee of IR£20,000
 - and
 - (ii) in respect of each 200 KHz duplex radio frequency channel in the 1800 MHz frequency band specified in the Licence, a fee of:-
 - 1. IR£10,000 per channel in respect of the first block of 24 channels;
 - 2. IR£15,000 per channel in respect of the second block of 24 channels;

3. IR£20,000 per channel in respect of the third block of 24 channels.
- (b) Where the Licensee has not been the holder of a licence under the GSM and TACS Regulations, the fees set out in paragraph (a) of this Regulation shall be subject to a discount of 50% on the granting and on the first renewal of the Licence.
- (c) If the Licence relates to Apparatus for use for the provision of a TACS mobile telephony service then the Licensee shall pay in respect of each 25KHz duplex radio frequency channel specified in the Licence a fee of IR£2,500 on the granting of the Licence and a fee of IR£2,500 on each renewal of the Licence.
- (d) If the Licence relates to Apparatus for the provision of both a GSM mobile telephony service and a TACS mobile telephony service then the Licensee shall pay both the appropriate fee set out in paragraph (a) and the appropriate fee set out in paragraph (c) above.
- (2) If the Licence is granted for a portion of a year then the Licence fee to be paid by the Licensee shall be calculated as follows:
- $$A \times (B \div 12) = C$$
- where A is the appropriate annual fee as set out in Regulation 8.1; B is the number of whole months for which the Licence is granted; and C is the appropriate Licence fee to be paid.
- (3) The fee specified in paragraphs (1) and (2) of this Regulation shall be paid to the Office of the Director of Telecommunications Regulation by way of banker's draft or such other means and on such terms as the Director may decide.
- (4) If a Licence is suspended or revoked, the Licensee shall not be entitled to be repaid any part of the fee paid by the Licensee under this Regulation.
- (5) If a Licence is amended by the addition of a radio frequency channel to those specified in the Licence on which the Apparatus may be used, the appropriate fee specified in paragraph (1) of this Regulation in relation to such channel

(reduced to an amount that bears to the full amount of the fee the same proportion as the unexpired period of the Licence on the date of the amendment bears to a year) shall be paid.

- (6) An amount payable by a person in respect of a fee under this Regulation may be recovered by the Director from the person as a simple contract debt in any court of competent jurisdiction.
- (7) The granting or renewal of a Licence shall not be construed as warranting that the Licence shall be renewed at any time in the future.

Licensee to satisfy all Legal Requirements.

- 9. Nothing in these Regulations shall absolve a Licensee from any requirement in law to obtain any consents, permissions, authorisations or other licences that may be necessary for the provision of a mobile telephony service or for the discharge of the obligations, or the exercise of the entitlements, of the Licensee under the Licence.

SCHEDULE

**WIRELESS TELEGRAPHY ACT, 1926
WIRELESS TELEGRAPHY (GSM AND TACS MOBILE TELEPHONY LICENCE)
REGULATIONS, 1999**

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for the purpose of the provision of a mobile telephony service.

I, _____, Director of Telecommunications Regulation, in exercise of the powers conferred on me by section 5(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), hereby grant the following Licence to:

of _____

1. This Licence shall come into operation on the ____ day of ____, 200__, and unless previously revoked or renewed shall expire on the ____ day of ____, 200__.

2. In this Licence:-

“the Act of 1983” means the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983);

“the Apparatus” has the meaning assigned to it by paragraph 3;

“the Director” means the Director of Telecommunications Regulation;

“the Licensee” means _____
of _____ / having its registered office at _____ *

“the Service” has the meaning assigned to it by paragraph 5(1)(a);

3. The Licensee is hereby authorised to keep, have possession of install, maintain, work and use, at the places specified in the First Schedule to this Licence, the apparatus for

* delete as appropriate

wireless telegraphy specified in the Second Schedule to this Licence (referred to subsequently in this Licence as the “Apparatus”).

4. Nothing in this Licence shall absolve the Licensee from any requirement in law to obtain any consents, permissions, authorisations or other licences that may be necessary for the provision of the Service, or for the discharge of the obligations, or the exercise of the entitlements, of the Licensee under this Licence.

5. (1) It shall be a condition of this Licence:-

(a) that the Apparatus shall be used only for the purpose of the provision of the mobile telephony service authorised by a licence under section 111(2) of the Act of 1983 held by the Licensee (referred to subsequently in this Licence as the “Service”);

(b) that the Apparatus shall be used only on the radio frequency channels specified in the Third Schedule to this Licence and that those channels shall be used in an efficient manner;

(c) that the Licensee shall ensure that the Apparatus is not used in a manner that could infringe the privilege of the Minister for Public Enterprise under the Telegraph Act, 1869;

(d) that, if the Director:-

(i) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and

(ii) gives to the Licensee or sends to the Licensee, at the address of the Licensee specified in this Licence or notified to the Director under subparagraph (n) of this paragraph, a notice requiring that the Apparatus be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hours or such days, as may be specified in the notice,

the Licensee shall ensure that the requirement is complied with;

- (e) that the Licensee shall not, without the consent of the Director (which shall not be unreasonably withheld) assign this Licence or any of the powers, duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;
- (f) that the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the Service are not authorised to receive from being received by means of the Apparatus;
- (g) that, if any such communication or information as aforesaid is so received, the Licensee shall not, and shall endeavour to ensure that employees and agents of the Licensee of the Service do not:-
 - (i) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of the staff of the Director); or
 - (ii) reproduce it in writing or otherwise copy it or make use of it;
- (h) that the Licensee shall ensure that the installation, maintenance and operation of the Apparatus is such and is effected or carried on in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not interfere with any other apparatus for wireless telegraphy the subject of a licence under section 5 of the Wireless Telegraphy Act, 1926;
- (i) that the Licensee shall ensure that the erection and positioning of Apparatus consisting of antennae and support structures for antennae is effected in accordance with law;
- (j) that the Licensee shall ensure that non-ionising radiation emissions from each radio installation associated with the mobile telephony network operated by the Licensee 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 specified by the European Union;

- (k) that the Licensee shall ensure that access to the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access;
- (l) that, if the Director is of opinion that, in the interests of the orderly regulation of the use of apparatus for wireless telegraphy or radio frequency channels, it is desirable to do so, he or she may, by notice in writing given to the Licensee or sent to the Licensee at the address of the Licensee specified in the Licence or notified to the Director under subparagraph (n) of this paragraph:-
 - (i) suspend this Licence, in so far as it applies to a particular part of the Apparatus kept at a particular place, specified in the notice, for such period as may be specified in the notice; or
 - (ii) amend a provision of this Licence in such manner as may be specified in the notice;
- (m) that, at the request of the Licensee, the Director may, if he or she considers it appropriate to do so, amend this Licence by adding to, deleting from or altering the radio frequency channels specified in the Third Schedule to this Licence. Any such amendment shall be effected by a notice in writing from the Director specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in this Licence or notified to the Director under subparagraph (n) of this paragraph;
- (n) that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Director in writing of the change; and
- (o) that the Licensee complies with any special conditions imposed under section 8 of the Wireless Telegraphy Act, 1972, and subject to which this Licence is deemed by subsection (3) of that section to be issued.

FIRST SCHEDULE

Places at which the Licensee is authorised by this Licence to keep and have possession of the Apparatus.

SECOND SCHEDULE

The apparatus for wireless telegraphy to which this Licence applies.

THIRD SCHEDULE

Radio frequency channels on which the Apparatus is authorised by this Licence to be used.

GIVEN under my hand, this
day of .

GIVEN under my hand, this
23 day of December **1999**

Etain Doyle
Director of Telecommunications Regulation

The Minister for Public Enterprise consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the
Minister for Public Enterprise this
22 day of December **1999**

Mary O'Rourke T.D.

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 providing GSM and TACS mobile telephony services, for the regulation of such apparatus and for the payment of fees by persons granted licences for that purpose.