



STATUTORY INSTRUMENTS.

S.I. No. 213 of 2013

WIRELESS TELEGRAPHY (GSM FOR RAILWAY LICENCE)
REGULATIONS 2013

WIRELESS TELEGRAPHY (GSM FOR RAILWAY LICENCE)
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The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) of the Wireless Telegraphy Act 1926 (No. 45 of 1926) and with the consent of the Minister for Communications, Energy and Natural Resources pursuant to section 37 of the Communications Regulation Act 2002 (No. 20 of 2002), hereby makes the following regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (GSM for Railway Licence) Regulations 2013.

Interpretation

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

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

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

“Commission” means Commission for Communications Regulation;

“GSM-R” means Global System for Mobile Communications — Railway;

“GSM-R apparatus” means apparatus for wireless telegraphy used for GSM-R;

“GSM-R apparatus record” means a record maintained by a licensee pursuant to the condition at Regulation 10(1)(s);

“harmful interference” means interference which endangers the functioning of a radio navigation service or other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with a requirement under the International Telecommunication Union Radio Regulations, a Regulation of the European Union or legislation giving effect to an act, or a provision of an act, adopted by an institution of the European Union relating to the provision of an electronic communications service, electronic communications network or an associated facility or the radio frequency spectrum or regulations made under the Act of 1926;

“insolvency related event” in respect of a licensee means any of the following—

- (a) becoming insolvent or holding a meeting with or making a composition or arrangement with creditors or putting a proposal to creditors

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th June, 2013.*

for a voluntary arrangement for a composition of debts or a scheme of arrangement or taking any preparatory steps in relation to any of the foregoing,

- (b) having a receiver or similar official or other encumbrance take possession of or be appointed over or having any distress, execution or other process levied or enforced on the whole or any substantial part of the assets of the licensee (and not discharged within 7 days),
- (c) ceasing or threatening to cease to carry on business or becoming unable or being deemed to be unable to pay debts within the meaning of section 214 of the Companies Act 1963 (No. 33 of 1963),
- (d) having a petition presented or making any other form of application for bankruptcy or winding-up of the licensee or the appointment of an examiner or similar official to the licensee or any preparatory steps being taken in relation to any of them or convening a meeting or taking any preparatory or other steps to convene a meeting for the winding up, bankruptcy or dissolution of the licensee (other than for the purposes of a solvent amalgamation or reconstruction), and
- (e) having any event analogous to any event referred to in paragraphs (a) to (d) occur under the laws of the jurisdiction under which the licensee is incorporated;

“licence” means a licence for GSM-R apparatus granted under section 5 of the Act of 1926;

“licensee” means the holder of a licence for the time being in force;

“member of the staff” means a person appointed to be a member of the staff of the Commission under section 20 of the Act of 2002;

“terminal equipment” means a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks (that is to say, telecommunications networks used wholly or partly for the provision of publicly available telecommunications services).

(2) In these Regulations, a reference to an enactment or Regulations shall be construed as a reference to the enactment or Regulations as amended or extended by or under any subsequent enactment or Regulations, including these Regulations.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1926 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act.

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act.

(5) A word or expression that is used in these Regulations and that is also used in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations.

Licences to which these Regulations apply

3. These Regulations apply to licences granted under section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use GSM-R apparatus anywhere in the State in accordance with the terms and conditions, as set out in Regulation 10, to be observed by the holders of such licences and subject to which such licences are deemed to be granted.

Limitation of Licence

4. (1) A licence granted under these Regulations does not grant to the licensee any right, interest or entitlement other than the right to keep and have possession of GSM-R apparatus.

(2) Nothing in these Regulations shall absolve a licensee from any requirement in law to obtain any approvals, consents, licences, permissions or authorities that may be necessary for the discharge of the obligations or the exercise of entitlements under the licence.

Application for Licences

5. (1) Any application for a licence to which these Regulations apply shall be in such form as may, from time to time, be specified by the Commission and shall include the name, address and contact details of the applicant and a description of the GSM-R apparatus in respect of which the licence is sought.

(2) In addition to any information provided under paragraph (1), an applicant for a licence shall, if so requested by the Commission, furnish such additional information as the Commission may reasonably require for the purposes of assessing the application and the Commission may refuse to grant a licence to an applicant who fails or refuses to comply with a request made under this subparagraph.

Addresses for notices

6. (1) Where a licensee is ordinarily resident in the European Union, the licensee shall, on the grant of his, her or its licence, furnish in writing to the Commission the address and, where appropriate, fax number or e-mail address, or both, within the European Union to which notices and other documents under these Regulations may be delivered to the licensee or sent by or on behalf of the Commission and shall, as occasion requires, furnish any change in such address, fax number, or e-mail address.

(2) Where a licensee is ordinarily resident outside the European Union, the licensee shall, on the grant of his, her or its licence, furnish in writing to the Commission an address in the State to which notices and other documents under these Regulations may be delivered to the licensee or sent by or on behalf of the Commission and shall, as occasion requires, furnish any change in such address.

(3) For the purposes of these Regulations, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office and every other body corporate and every incorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A notice or document delivered, or sent by post or electronic communication (within the meaning assigned by section 2 of the Electronic Commerce Act 2000 (No. 27 of 2000)) or sent by facsimile to any address, fax number or e-mail address furnished in accordance with paragraph (1) or (2), shall be deemed for the purposes of these Regulations to have been duly served by the Commission.

(5) Where the service of any notice or document is effected by fax or e-mail in accordance with paragraph (1), the service of such document shall, unless the contrary is proved, be deemed to have been effected at the time at which the sender's fax or e-mail system generates the message confirming successful transmission of the total number of pages of the notice or document.

Form of Licence

7. A licence to which these Regulations apply shall be in the form specified in Schedule 1 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.

Expiry of licences and period during which licences continue in force

8. All licences shall expire in full at midnight on the tenth anniversary of the date on which the first such licence was granted under these Regulations and no licence shall be renewed nor shall any licence remain in effect following the expiry date and all rights and entitlements under all licences, including all spectrum rights of use, shall cease altogether as and from the expiry date.

Licence fees

9. (1) The annual licence fee set out in Schedule 2 shall apply to each licence granted under these Regulations.

(2) The Commission will not grant a licence unless the applicable fee prescribed under these Regulations has been paid in full.

(3) Licence fees shall be paid to the Commission on the date of first granting of a licence and thereafter annually on each anniversary of the date of first granting of a licence.

(4) Any licence fee paid pursuant to paragraph (1) shall not be refundable in the event of any surrender, revocation, suspension or amendment of the licence.

(5) Licence fees shall be paid to the Commission by way of a banker's draft or electronic funds transfer or by such other means as the Commission may decide. Where the date on which payment of fees is due falls on a Saturday, a Sunday or a public holiday payment, shall be made on or before the last working day before the date on which payment is due.

Licence terms and conditions

10. (1) The following are the terms and conditions to be observed by the holder of a licence and subject to which any such licence is deemed to be granted—

- (a) the licensee shall use the GSM-R apparatus for GSM-R only;
- (b) the licensee shall use the GSM-R apparatus solely for purposes related exclusively to the operation and functioning of the licensee's rail network and the GSM-R apparatus may not be used to provide commercial services to third parties;
- (c) licensed GSM-R apparatus may only be used on the radio frequency spectrum specified in the licence;
- (d) frequencies assigned to the licensee in the licence may only be used for railway operational applications;
- (e) Public mobile radio services may not be provided using the radio frequency spectrum as specified in the licence;
- (f) the licensee shall ensure that all terminal equipment used on or associated with the GSM-R apparatus operated by the licensee complies with the standards set for such equipment by the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations 2001 (S.I. No. 240 of 2001) and the European Communities (Interoperability of the Rail System) Regulations 2011 (S.I. No. 419 of 2011) and with any other relevant standards that may, from time to time, be specified by the European Telecommunications Standards Institute and the European Union;
- (g) the licensee shall not, save with the written prior consent of the Commission, assign his, her or its licence or any of the rights conferred by the licence, nor shall the licensee lease his, her or its licence, or otherwise transfer to another person any benefit of the licence;
- (h) the licensee shall facilitate full interoperability between the Irish and United Kingdom rail networks. In particular, the licensee shall ensure that the operation of his, her or its licensed GSM-R apparatus is consistent with any memorandum of understanding agreed between the State and the United Kingdom;
- (i) the licensee shall ensure that—
 - (i) non-ionising radiation emissions from the GSM-R apparatus operated by the licensee are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (“ICNIRP”) and that these comply with any radiation emission standards adopted and published by the ICNIRP or its successors from time to time, any radiation

emission standards of the European Committee for Electrotechnical Standards and any other radiation emission standards specified by law, and

- (ii) the GSM-R apparatus operated by the licensee is not installed or operated at a location in such a manner as to cause the aggregate of non-ionising radiation emissions to exceed the limits specified by the guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by the ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any other radiation emissions standards specified by law;
- (j) the licensee shall ensure that the GSM-R apparatus or any part thereof shall be installed, maintained, operated and used in such a manner as not to cause harmful interference;
- (k) the licensee shall ensure that the GSM-R apparatus or any part thereof shall be installed, maintained and operated in such a manner as to ensure that the safety of persons or property is not thereby endangered;
- (l) the licensee shall comply with any “Notice of Cessation” served on him, her or it by the Commission. For the purpose of this subparagraph, a Notice of Cessation is a notice which may be served on a licensee by the Commission following a determination by the Commission that the licensee has failed to comply with a condition of his, her or its licence and which may require that the possession, installation or use of such licensed GSM-R apparatus, or part thereof, as may be specified therein shall cease forthwith, or on or before such date and time as may be specified therein, and such a notice may require the licensee to take such other measures as may be specified therein by the Commission;
- (m) the licensee shall ensure that, save as may be required by law, access to, and use of, the GSM-R apparatus to which his, her or its licence relates is restricted to the licensee, employees and agents of the licensee, and persons authorised by or on behalf of the licensee;
- (n) the licensee shall take all reasonable measures to prevent any message or information which the licensee is not authorised to receive from being received by the apparatus;
- (o) if any message or information that the licensee is not authorised to receive is received by means of apparatus licensed under these Regulations the licensee shall not—
 - (i) make known or allow to be made known the message’s contents, origin, destination or existence or the fact of its receipt, to any person other than an authorised person, or

- (ii) reproduce in writing or otherwise make use of or copy such message or information or allow it to be reproduced in writing, made use of or copied;
- (p) the licensee shall, upon becoming aware of any event likely to materially affect his or her ability to comply with these Regulations or any condition of his, her or its licence, notify the Commission of that fact;
- (q) the licensee shall observe good site engineering practice;
- (r) the licensee shall furnish to the Commission such information relating to any licensed GSM-R apparatus as the Commission may, from time to time by notice in writing served on the licensee, require;
- (s) the licensee shall keep such records, as the Commission may from time to time require the licensee to keep, for such period of time as the Commission may specify and this may include records as to the location of any licensed GSM-R apparatus or part thereof;
- (t) the licensee shall, on request from the Commission, produce his, her or its licence for inspection;
- (u) the licensee shall, upon becoming aware of the occurrence of any insolvency related event or of any other event likely to materially affect his, her or its ability to comply with these Regulations or any conditions set out or referred to in the licence, notify the Commission of that fact;
- (v) the licensee shall within 28 days after the occurrence of any of the following events notify the Commission of—
 - (i) any change in the identity of the persons having control of the licence or, in a case where the licensee is a body corporate, in the identity of the directors of the licensee or of any body corporate having control of the licensee, or
 - (ii) any change in the identity of any persons having any interest in the licensee or in any body corporate having direct or indirect control of the licensee such that a person or group of persons acting together—
 - (I) has acquired an interest of more than 20 per cent on aggregate in the licensee, or
 - (II) having an interest of more than 20 per cent on aggregate in the licensee, has increased or decreased that interest;

For the purposes of this subparagraph, “control” means the power (whether directly or indirectly) to direct or cause to be directed the management policies, whether through ownership of voting rights, by contract or otherwise.

- (w) the licensee shall comply with any request from the Commission or a member of the staff, in particular a request to—
 - (i) permit the a member of the staff at all reasonable times to inspect any records which the Commission requires to be, or which are, kept by the licensee in connection with the GSM-R apparatus,
 - (ii) make available any test equipment or GSM-R apparatus necessary to facilitate the testing by a member of the staff of the test equipment or GSM-R apparatus,
 - (iii) make arrangements—
 - (I) to allow a member of the staff to carry out an audit,
 - (II) for the carrying out of an independent audit,
 - (III) to carry out an audit, or
 - (IV) to arrange for an independent audit,

of any aspect of the licensee's business relating to the operation of GSM-R apparatus in order to ensure compliance with these Regulations or the licence. The licensee shall allow a member of the staff, or any independent auditor, such access to any premises, equipment or any part of the GSM-R apparatus, or to inspect, take copies of and acquire such information, as may reasonably be required for the purposes of carrying out the audit, or
 - (iv) bear any costs associated with an independent audit conducted by or on behalf of the Commission;
- (x) the licensee shall comply with any direction, requirement or notice given to him, her or it by the Commission in relation to the licensed GSM-R apparatus;
- (y) without prejudice to the generality of subparagraph (x), the licensee shall comply with any direction, requirement or notice given to him, her or it by the Commission in respect of the use or the cessation of use of any radio frequency channel, or in respect of an amendment to any characteristics used in the operation of the GSM-R apparatus to which the licence relates;
- (z) any information furnished to the Commission under these Regulations or under and in accordance with a licence may be published by the Commission if the Commission considers it proper or appropriate so to do;
- (aa) the Commission may, in a proportionate manner, amend a licence where such amendment is objectively justifiable;

- (bb) the licensee shall pay the fee prescribed under these Regulations; and
- (cc) the licensee shall comply with any technical conditions set out in the text of the licence.

Revocation and suspension of licence

11. (1) The Commission may, after serving notice on a licensee specifying reasons for the proposed suspension or revocation of his, her or its licence and after affording the licensee a reasonable opportunity to make representations and after having considered any such representations, suspend or revoke a licence in any one of the following circumstances—

- (a) where the licensee fails or refuses to comply with any term or condition of the licence subject to which such licences are deemed to be granted;
- (b) where the licensee fails or refuses to comply with a direction of the Commission or hinders or obstructs a member of the staff in the performance of his or her functions;
- (c) where the licensee contravenes any provision of these Regulations;
- (d) where the application made by the licensee for the grant of his, her or its licence was false or misleading in any material respect;
- (e) where, in the opinion of the Commission, such a revocation or suspension is required for the purpose of complying with any law;
- (f) in a case where the licensee is an individual, where the licensee has been adjudicated bankrupt;
- (g) in a case where the licensee is a company, within the meaning of the Companies Acts, where an order for its winding up has been made or a resolution for a voluntary winding up has been made or a resolution for a voluntary winding up (within the meaning of the Companies 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 or, if the licensee is not incorporated in the State or not registered under the Companies Acts, where it is subject to any equivalent procedure;
- (h) where the licensee notifies the Commission that he, she or it does not intend to use the GSM-R apparatus to which the licence relates;
- (i) where the licensee agrees with the Commission that the licence ought to be revoked;
- (j) where the licensee fails to use the GSM-R apparatus to which the licence relates prior to the date of renewal of his, her or its licence or for any period of more than 60 consecutive days after that date;

- (k) in case the licensee is a body corporate, where a change of which the licensee is required to notify the Commission under regulation 10(1)(v) occurs and that change is such that, if the Commission were determining whether to award a licence to the licensee in the changed circumstances, the Commission would not award the licence to the licensee because of that change; and
- (l) where the fees prescribed under these Regulations are not paid.

SCHEDULE 1**WIRELESS TELEGRAPHY ACTS 1926 TO 2009****WIRELESS TELEGRAPHY (GSM FOR RAILWAY LICENCE)
REGULATIONS 2013****Licence granted under section 5 of the Wireless Telegraphy Acts 1926 to 2009
to keep and have possession of GSM-R Apparatus**

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Acts 1926 to 2009, hereby grants to _____ of _____ a licence to keep and have possession of Global System for Mobile Communications — Railway apparatus as specified in Part I of this licence.

The Licensee shall comply with the terms and conditions and restrictions as prescribed by the Wireless Telegraphy (GSM for Railway Licence) Regulations 2013 (S.I. No. 213 of 2013) and subject to which the Licence is deemed to be granted.

The Licensee shall comply with the conditions set out in Part II of the Licence.

The Licence shall come into effect on DD/MM/YY and subject to revocation, suspension or withdrawal, expire on DD/MM/YY

Signed: _____

For and on behalf of the Commission for Communications Regulation.

Date of issue: _____

Official Stamp

PART I**Statement of licensed apparatus****PART II****Technical Licence conditions**

1. The Licensee shall use the GSM-R apparatus only on the following radio frequency:

Frequency	
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SCHEDULE 2**FEES PAYABLE IN CONNECTION WITH LICENCES**

The Annual Licence fee to be paid in respect of a licence under these Regulations, and thereafter on the anniversary of the licence grant date, is as follows:

€50,400 per 2 x 1 MHz of spectrum per annum (or per fraction of a year on a daily pro rata basis) subject to annual adjustment in accordance with any changes in the consumer price index that occur following the date of commencement of these Regulations, and for the purposes of this Schedule “change in the consumer price index” means the difference between—

a) the All Items Consumer Price Index number last published by the Central Statistics Office before the date of commencement of these Regulations;

and

b) the All Items Consumer Price Index number most recently published by the Central Statistics Office since such commencement.

L.S.

GIVEN under the Official Seal of the Commission for Communications Regulation this, 20 June 2013.

KEVIN O'BRIEN,
Commissioner.

on behalf of the Commission of Communications Regulation.

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

L.S.

GIVEN under the Official Seal of the Minister for Communications, Energy and Natural Resources this, 6 June 2013.

PAT RABBITTE TD,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

These Regulations prescribe certain matters in relation to licences granted for GSM Railway apparatus under section 5 of the Wireless Telegraphy Acts 1926 to 2009.

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