

STATUTORY INSTRUMENTS

S.I. No. 339 of 2003

R E G U L A T I O N S

entitled

Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations, 2003

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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 by section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), and 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 and the Communications, Energy and Geological Survey of Ireland (Transfer of Departmental Administration and Ministerial Functions) Order 2002 (No. 300 of 2002) as adapted by the Marine and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2002 (No. 307 of 2002), hereby makes the following Regulations

Citation

1. These Regulations may be cited as the Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003
2. The Principal Regulations and these Regulations may be cited together as the Wireless Telegraphy (GSM Mobile Telephony Licence) Regulations, 1999 and 2003 and shall be construed together as one.
3. These Regulations will come into force 25 July 2003.
4. The Principal Regulations are amended by substituting for Regulations 2 – 8 the following;

“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 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;

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

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

“Authorised Undertaking” means an undertaking deemed to be Authorised under Regulation 4 of S.I. 306 of 2003

“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 Authorised Person under Regulation of S.I 2003;

“Licensee” means the holder of a Licence;

“mobile telephony service” means a GSM mobile telephony service and

“Principal Regulations” means Wireless Telegraphy (GSM and TACS Licence) Regulations (S.I 442 of 1999).

- (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 Commission and shall be in writing in such form as may be determined by the Commission 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 Commission such information as the Commission may reasonably require for the purpose of its functions under these Regulations.
- (3) The Commission may grant a Licence in accordance with the provisions of Regulation of the Authorisation 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 Commission may determine from time to time or in any particular case.

Duration and Renewal of Licences

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

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 comes into operation and, unless renewed, shall then expire.
- (2) Notwithstanding paragraph (1) of these Regulations where the licensee is a holder of a licence under these Regulations that licence shall not be renewed on the 16 anniversary after the first grant of the licence and shall then expire.
- (3) A Licence may be renewed from time to time by the Commission under paragraph (4) of this Regulation.
- (4) On application in writing by or on behalf of a Licensee to the Commission before the expiration of his or her Licence, the Commission 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 Commission 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. 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.
- (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, 1997 expire on the 15th day of May, 2011.

Conditions of Licences

5. It shall be a condition of a Licence:-
 1. that the Licensee shall ensure that it complies with the geographical and technical conditions contained within the schedules 1- 3 to its licence;
 2. that the licensee shall ensure that it complies with all the commitments contained within Schedule 4 of the licence being made by the licensee in the course of a comparative evaluation selection procedure;
 3. that the Licensee shall 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;
 4. 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 and that a mobile telephony system operated by the licensee 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 EC law;

5. that the licensee shall pay all fees due to the Commission in the manner prescribed under these Regulations;
6. that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Commission in writing of the change.
7. 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 Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made subject to and in accordance with the Authorisation Regulations, and any other requirements under applicable national or European Community law.

(2) Where the Commission 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, it may amend the licence in accordance with the Authorisation Regulations.

(3) Without prejudice to paragraph (1) of this Regulation, at the request of the Licensee, the Commission may, if it 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 Commission specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Commission pursuant to the Licence.

Powers of Authorised Officers

7. (1) The Commission may appoint such members of the staff of the Commission as it considers appropriate to be authorised officers to act for the purposes of these Regulations;

(2) A person appointed under paragraph (1) shall, on its appointment, be furnished by the Commission with a certificate of its appointment and when exercising a power conferred by paragraph (3) shall if so requested by any person thereby affected, produce such certificate to that person for inspection.

(3) For the purposes of the exercise by the Commission of its functions under these Regulations, an authorised officer may exercise the powers conferred on an authorised officer by section 39(3) of the Act of 2002.

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 €25,395

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. €12,697 per channel in respect of the first block of 24 channels;
2. €19,046 per channel in respect of the second block of 24 channels;
3. €25,395 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.

(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 Commission for Communications Regulation by way of banker's draft or such other means and on such terms as the Commission 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 Commission 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.

SCHEDULE

**WIRELESS TELEGRAPHY ACT, 1926
WIRELESS TELEGRAPHY (GSM MOBILE TELEPHONY LICENCE) (AMENDMENT)
REGULATIONS, 2003**

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 GSM mobile telephony service

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 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996) and Section 9(1) of the Communications Regulation Act 2002 (No. 20 of 2002) hereby grants to the licensee specified authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in the Second Schedule of this licence and subject to the terms and conditions as set out in the Wireless Telegraphy (GSM Mobile Telephony licence)(Amendment) Regulations, 2003 (S.I. No. 339 of 2003),

The Commissioner for Communications Regulation, hereby grants the following Licence to:

_____ of _____

1. This Licence shall come into operation on _____ and unless previously revoked shall expire on the ____ day of __ 20 __,
2. The Licensee shall ensure that it complies with the geographical and technical conditions contained within the First – Third schedules to this licence
- 3 The licensee shall ensure that it complies with all the commitments contained within Schedule 4 of the licence being made by the licensee in the course of a comparative evaluation selection procedure.

Schedule 1

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

Schedule 2

The apparatus for wireless telegraphy to which this Licence applies.

Schedule 3

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

Schedule 4

Commitments which the Licensee obtaining the licence has made in the course of a competitive or comparative selection procedure.

GIVEN under the official seal of the Commission for Communications Regulation this 25 day of July 2003

Etain Doyle

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 23 day of July **2003**

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