

STATUTORY INSTRUMENT

S. I. No. 435 of 2002

**WIRELESS TELEGRAPHY (Mobile Radio Systems)
REGULATIONS, 2002.**

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.**

Price: €3.81

(Pn. 12091)

WIRELESS TELEGRAPHY (Mobile Radio Systems) REGULATIONS, 2002

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 with the consent of the Minister for Communications, Marine and Natural Resources, pursuant to subsection (8) of the said section 4 and the Communications, Energy and Geological Survey of Ireland (Transfer of Departmental Administration and Ministerial Functions) Order 2002 (No. 300 of 2002) and the Marine and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2002 (No. 307 of 2002), hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (Mobile Radio Systems) Regulations, 2002

Interpretation

2. (1) In these Regulations -

“authorised officer” means a person appointed by the Director in writing to be an authorised officer for the purpose of the Regulations;

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

“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;

“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 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 under which the Licensee is incorporated;

“Licence” means a Licence under section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) for a mobile radio system or mobile radio systems as defined in the Regulations and cognate words shall be construed accordingly;

“Licensee” means the holder of a Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licences) Regulations, 1998 (SI No. 96 of 1998);

“licensed system” means a mobile radio system for which a Licence has been granted under the Regulations;

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

“mobile radio system” means a system using radio frequencies to provide wireless two way communication between two or more stations, at least one of which must be a mobile station, and being of a type set out in Part I of the Licence.

“station” means any apparatus for wireless telegraphy capable of being used for the purposes of transmitting and/ or receiving messages by means of radiated electro-magnetic waves;

“Telecommunications Licence” means a Licence under section 111 of the Act of 1983;

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

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

“the Director” means the Director of Telecommunications Regulation appointed under the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996);

“the Regulations” means the Wireless Telegraphy (Mobile radio systems) Regulations, 2002 (S.I. No. 435 of 2002).

(2) In these Regulations –

- (a) 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;
- (b) a reference to a regulation or a schedule is to a regulation of, or a schedule to, these Regulations, unless it is indicated that reference to some other enactment is intended;

(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended;

(d) a reference to a Directive of the European Parliament and Council shall be construed as a reference to the Directive as amended or extended by any subsequent Directive.

(3) The Interpretation Act, 1937 (No. 38 of 1937) applies to these Regulations.

Licences to which these Regulations apply

3. These Regulations apply to mobile radio systems, having the characteristics as set out in the Licence, operating in accordance with the technical conditions of the Licence and to which no other Regulation under the Act of 1926 applies.

Limitation of Licence

4. (1) A Licence does not grant to the Licensee any right, interest or entitlement other than the right to keep, have possession of, install, maintain, work and use the mobile radio systems.

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

Licence application

5. (1) An application for a Licence shall be in such form and subject to such conditions as shall be specified by the Director from time to time.
- (2) An applicant for a Licence must be a natural person or a properly constituted legal entity.
- (3) An applicant for a Licence shall, if so requested by the Director, furnish such information as the Director may reasonably require for the purposes of assessing the application, and the Director may refuse to grant a Licence to an applicant who fails or refuses to comply with a request under this paragraph, subject to the Licensing Regulations as applicable.
- (4) Following the assessment of an application the Director may issue a Licence to any person but may, subject to the Licensing Regulations, as applicable, and any requirements under national and EC law, refuse to issue a Licence.

Addresses for notices

6. (1) Where the Licensee is domiciled in the European Union (the “EU”), the Licensee shall on the grant of his or her Licence furnish in writing to the Director the address and, where appropriate, fax number and/or email address, within the EU to which notices and other documents under these Regulations may be delivered or sent by post or by telecommunications services operated in accordance with the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983), to him or her, by or on behalf of the Director and shall, as occasion requires, likewise furnish any change of address, fax number or email address and such notice or document delivered to, or sent by post, or by such telecommunications services, to such address, fax number or email address so furnished shall be deemed for the purposes of these Regulations to have been duly served by the Director.
- (2) Where the Licensee is domiciled outside the EU, the Licensee shall include an address for service in Ireland.

(3) Where the service of any notice or document is effected by fax in accordance with paragraph (1) of this Regulation, 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 system generates a message confirming successful transmission of the total number of pages of the notice or document.

Form of Licence

7. The Licence shall be in the form specified in the First Schedule with such variation, if any, (whether by addition, deletion or alteration) as the Director may determine from time to time in accordance with applicable national or EC law.

Continuance in force of Licences

8. Subject to the provisions of these Regulations, every Licence shall, unless previously surrendered by the Licensee, or unless or until it is revoked or renewed by the Director, and subject to any suspension thereof, in accordance with the provisions of these Regulations, continue in force from the date of commencement until the date of termination, as set out in Part VIII of the Licence.

Renewal of Licences

9. (1) Subject to the provisions of these Regulation, the licensing Regulations, as applicable, any requirement under applicable national and EC law and any terms and conditions as may be specified by the Director acting in accordance with her statutory powers under national and EC law the Director may renew a Licence.

(2) A Licence which is renewed under this Regulation shall, subject to the provisions of this Regulation and unless previously surrendered by the Licensee, or unless or until it is revoked or again renewed by the Director, and subject to any suspension

thereof, continue in force from the date of renewal until the new date of termination, as set out in the revised Part VIII of the Licence.

(3) An application for renewal of a Licence, accompanied by an appropriate Licence fee as specified in the Second Schedule shall be made at least 28 days before expiration of the Licence.

(4) In considering whether to renew a Licence under this Regulation, the Director shall have regard in particular to:

- (i) whether the Licensee complied with these Regulations and the conditions attached to the expiring Licence pursuant to these Regulations;
- (ii) the management and efficient use of radio spectrum;
- (iii) the avoidance of harmful interference.

(5) 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.

Licence fees

10. Fees as set out and provided for in the Second Schedule are hereby prescribed in relation to Licences for the purpose of section 6 of the Act of 1926.

11. (1) Any fee paid in respect of a Licence pursuant to these Regulations shall not be refundable in the event of revocation, suspension or amendment of the Licence pursuant to these Regulations or through the operation of any other law.

(2) All fees prescribed under these Regulations shall be recoverable by the Director as a simple contract debt in any Court of competent jurisdiction.

12. All fees payable under these Regulations shall be paid to the Director of Telecommunications Regulation and shall be so paid in cash, by cheque, money order or postal order, or by such other means as the Director for the time being considers appropriate.

Licence conditions

13. It shall be a condition of the Licence that:-

- (a) Where the Licence relates to a mobile radio system to be used for the purpose of providing telecommunications networks, systems or services to which section 111 of the Act of 1983, as amended by the Licensing Regulations relates, the Licensee is the holder of a Telecommunications Licence.
- (b) The mobile radio system shall be used only on such radio frequency spectrum as may be specified in the Licence and such radio frequency shall be used in an efficient manner.
- (c) The Licensee shall ensure that the equipment comprising the mobile radio system shall comply with the requirements of the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. 240 of 2001).
- (d) The Licensee shall not, save with the prior written consent of the Director, assign the Licence or any of the powers, duties or functions conferred by it or lease or let the Licence or otherwise transfer to another person the benefit or any benefits of the Licence.
- (e) The Licensee shall comply with any loading criteria or roll-out plan as set out in the Licence
- (f) The Licensee shall ensure;
 - (i) that non-ionising radiation emissions from the fixed mobile radio system 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 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; and

(ii) that a mobile radio 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.

(g) The Licensee shall ensure that the mobile radio system, or any part thereof, shall be installed, maintained, operated and used so as not to cause harmful interference, and in particular to apparatus for wireless telegraphy used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend.

(h) The Licensee shall ensure that the installation of the mobile radio system, or any part thereof is effected, and its maintenance and operation is carried on, in such a manner as to ensure that the safety of persons or property is not endangered.

(i) The Licensee shall, where –

(i) the Director, or his or her authorised officer, is satisfied that the Licensee has failed, or is failing, to comply with sub-paragraphs (f) or (g) of this Regulation; and

(ii) serves on the Licensee a notice pursuant to Regulation 16 of the Regulations,

ensure that the notice is complied with.

(j) The Licensee shall ensure that, save as may be required by law, access to, and use of, the mobile radio system or mobile radio systems to which the Licence relates is restricted to

the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee.

(k) 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 mobile radio system.

(l) If any message or information which a Licensee is not authorised to receive is unintentionally received by means of a mobile radio system, the Licensee shall not –

(i) make known, or allow to be made known, its contents, its origin, its destination, its 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.

(m) The Licensee shall -

(i) on request from an authorised officer, produce his or her Licence for inspection by the authorised officer;

(ii) upon becoming aware of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the Licence, notify the Director of that fact;

Information and inspections

14. (1) A Licensee shall -

(a) furnish to the Director such information relating to the mobile radio system which the Director may, from time to time, by notice in writing served on the Licensee, require;

(b) keep all or any records which the Director, from time to time, informs the Licensee that she requires to be kept;

(c) on request from an authorised officer, produce his or her Licence for inspection by the authorised officer;

(d) upon becoming aware of the occurrence of any insolvency related event or, of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the Licence, notify the Director of that fact;

(e) within 28 days after the occurrence of any of the following events notify the Director of such an occurrence:

(i) any change in the persons having control of the Licence, or in the directors of the Licensee or in the directors of any body corporate having control of the Licensee; and

(ii) any change in the persons having any interest in the Licensee or in a 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% in aggregate in the Licensee; or

(II) having (or having had) an interest of more than 20% in aggregate in the Licensee, has increased or decreased that interest;

For the purposes of this subparagraph, control means the possession, directly or indirectly of the power to direct or cause the direction of the management policies whether through ownership of voting rights, by contract or otherwise;

(f) (i) where the Licensee is incorporated in the State:

(I) within 7 days after the date upon which it is required to be filed with the Registrar of Companies, pursuant to section 127 of the Companies Act, 1963, furnish the Director with a copy of the annual return of the Licensee or any person who controls the Licensee;

(II) within 7 days of its circulation to the shareholders of the Licensee, furnish the Director with a copy of the annual report and accounts of the Licensee or any person who controls the Licensee;

(ii) where the Licensee is not incorporated in the State, furnish the Director with a copy of any returns, reports, accounts, or other information required to be prepared by the Licensee, or any person who controls the Licensee, in accordance with any laws under which the Licensee is incorporated or, at the request of the Director, a document to the like effect of any of the documents referred to at subparagraph (i), at such times and in such forms as the Director may specify from time to time in a notice served on the Licensee;

(g) on request from an authorised officer, permit the authorised officer at all reasonable times to inspect any records which the Director requires to be kept or which are kept by the Licensee in connection with the mobile radio system;

(h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate testing by the authorised officer of the system.

(2) The Director may arrange for an authorised officer to carry out an audit, or for the carrying out of an independent audit, or may require the Licensee to carry out an audit, or to arrange for an independent audit, of any aspect of the Licensee's business concerning the operation of a mobile radio system to ensure compliance with these

Regulations or the Licence; and the Licensee shall allow the authorised officer, or any independent auditor, such access to any premises, equipment or any part of the system, or to inspect, take copies of and acquire such information, as may be required in order to carry out the audit. The cost associated with any independent audit conducted under this paragraph shall be the responsibility of the Licensee.

(3) Any information furnished to the Director under these Regulations or under and in accordance with the Licence may, if the Director considers it proper so to do, be published by the Director.

Enforcement, amendment, revocation and suspension

15 (1) The Director may amend a Licence from time to time where objectively justifiable and in a proportionate manner, in accordance with the Licensing Regulations, as applicable, and any requirement under applicable national or EC law.

(2) Without prejudice to Regulations 16 of these Regulations and sub-section (1) of this Regulation, the Director may after serving notice on the Licensee specifying reasons and after affording the Licensee reasonable opportunity to make representations and after having considered any such representations, suspend or revoke the Licence in any of the following circumstances:

(i) where a condition of a Licence (including any condition imposed under these Regulations or other relevant enactments) 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 provision of these Regulations or any other relevant enactment;

(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 EC 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 2001, an order for its winding up has been made or a resolution for a 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 or for a Licensee not incorporated in the State or not registered under the Companies Acts 1963 to 2001, where it is subject to an equivalent procedure;

(viii) where the Licensee notifies the Director that he or she does not intend to use the licensed system for a licensed purpose;

(ix) where the Licensee agrees with the Director that the Licence should be revoked;

(x) where the Licensee fails to use a licensed system for a period of more than 30 consecutive days during any time after the commencement of the Licence;

(xi) where, in circumstances where the Licensee is a body corporate, a change of which the Licensee is required to notify the Director paragraph (e) of Regulation 14(1) occurs and that change is such that, if the Director was determining whether to award the Licence to the

Licensee in the new circumstances, the Director would not award the Licence to the Licensee because of the change.

16. Notwithstanding any other provision of these Regulations, the Director or an authorised officer may where he or she is of the opinion that a licensed system, or part thereof, is causing, or is likely to cause, harmful interference, and in particular to apparatus for wireless telegraphy used for the purpose of any safety of life service or for any purpose on which the safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, serve on the Licensee a notice, prohibiting the use, or as appropriate requiring that the use of such licensed system, or part thereof, as may be specified in the notice, cease forthwith or, on or before such date and time as may be so specified, and the Licensee shall not use, or as appropriate shall cease to use the licensed system, or part thereof, unless and until such notice has been withdrawn by the Director, or an authorised officer, and shall otherwise take such measures (if any) as may be specified by the Director, or an authorised officer, in the notice.

Compliance

- 17 (1) Subject to the provisions of these Regulations, the Licensing Regulations as applicable and any requirements under applicable national or EC law, the Licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Director in respect of any matter which direction, requirement or notice is, in the opinion of the Director, appropriate having regard to the functions of the Director.
- (2) Without prejudice to the generality of paragraph (1), the Licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Director in respect of the use or the cessation of use of any frequency channel, or in respect of an amendment to any characteristics used in the operation of a licensed system, as particularised in Part IV of the Licence.

Authorised Officer

18 (1) The Director may appoint such members of the staff of the Director as she considers appropriate to be authorised officers for the purpose of these Regulations.

(2) Without prejudice to any other functions or powers of authorised officers under these Regulations an authorised officer shall have the powers and obligations conferred on him or her by the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996) or such other legislation as may be enacted from time to time.

(3) An authorised officer shall, when exercising any power conferred on him or her by these Regulations, if so requested, produce to any person affected a copy of his appointment as such authorised officer.

Amendment of Community Repeater Regulations

19 Regulation 11 (c) of the Wireless Telegraphy (Community Repeater Licence) Regulations, 1988 (S.I. 83 of 1988) is hereby revoked.

FIRST SCHEDULE

Wireless Telegraphy Act, 1926

Wireless Telegraphy (Mobile Radio Systems) Regulations, 2002

Licence under Section 5 of the Wireless Telegraphy Act, 1926, to keep, have possession of, install, maintain, work and use mobile radio systems

1. The Director, in exercise of the powers conferred 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 pursuant to the provisions of the Wireless Telegraphy (Mobile Radio Systems) Regulations, 2002 (S.I. No.435 of 2002) grants to the Licensee specified in Part II of this Licence authorisation to keep, have possession of, install, maintain, work and use a mobile radio system in any part of the State of the type described in Part I of this Licence and of the description and having the characteristics described in Part IV of this Licence and subject to the terms and conditions as set out in this Licence and prescribed by the Regulations and any other applicable provision of national or EC law.
2. This Licence shall come into operation and terminate on the dates specified in Part VIII and shall, unless previously surrendered by the Licensee or unless or until it is revoked or renewed by the Director, and subject to any suspension thereof, continue in force from the commencement date until the termination date.
3. The Licensee shall comply with the technical conditions set out in Part V and with any alterations or additions thereto notified to the Licensee in writing by or on behalf of the Director.
4. The Licensee shall comply with any loading criteria set out in Part VI.
5. The Licensee shall, by the dates specified in any roll-out plan set out in Part VII install, work and put into use the licensed mobile radio system.

6. Nothing in these Regulations shall absolve a Licensee from any requirement in law to obtain any approvals, consents, Licenses, permissions and authorities that may be necessary for the discharge of the obligations or the exercise of entitlements under the Licence.

7. It shall be a condition of the Licence that:-
 - (a) Where the Licence relates to a mobile radio system to be used for the purpose of providing telecommunications networks, systems or services to which section 111 of the Act of 1983, as amended by the Licensing Regulations relates, the Licensee is the holder of a Telecommunications Licence.

 - (b) The mobile radio system shall be used only on such radio frequency spectrum as may be specified in the Licence and such radio frequency shall be used in an efficient manner.

 - (c) The Licensee shall ensure that the equipment comprising the mobile radio system shall comply with the requirements of the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. 240 of 2001).

 - (d) The Licensee shall not, save with the prior written consent of the Director, assign the Licence or any of the powers, duties or functions conferred by it or lease or let the Licence or otherwise transfer to another person the benefit or any benefits of the Licence.

 - (e) The Licensee shall comply with any loading criteria or roll-out plan as set out in the Licence

 - (f) The Licensee shall ensure;
 - (i) that non-ionising radiation emissions from the fixed mobile radio system 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 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; and

(ii) that a mobile radio 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.

(g) The Licensee shall ensure that the mobile radio system, or any part thereof, shall be installed, maintained, operated and used so as not to cause harmful interference, and in particular to apparatus for wireless telegraphy used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend.

(h) The Licensee shall ensure that the installation of the mobile radio system, or any part thereof is effected, and its maintenance and operation is carried on, in such a manner as to ensure that the safety of persons or property is not endangered.

(i) The Licensee shall, where –

(i) the Director, or his or her authorised officer, is satisfied that the Licensee has failed, or is failing, to comply with sub-paragraphs (f) or (g) of this Paragraph; and

(ii) serves on the Licensee a notice pursuant to Regulation 16 of the Regulations,

ensure that the notice is complied with.

(j) The Licensee shall ensure that, save as may be required by law, access to, and use of, the mobile radio system or mobile radio systems to which the Licence relates is restricted to

the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee.

(k) 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 mobile radio system.

(l) If any message or information which a Licensee is not authorised to receive is unintentionally received by means of a mobile radio system, the Licensee shall not –

(i) make known, or allow to be made known, its contents, its origin, its destination, its 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.

(m) The Licensee shall -

(i) on request from an authorised officer, produce his or her Licence for inspection by the authorised officer;

(ii) upon becoming aware of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the Licence, notify the Director of that fact;

8. A Licensee shall –

(a) furnish to the Director such information relating to the mobile radio system which the Director may, from time to time, by notice in writing served on the Licensee, require;

(b) keep all or any records which the Director, from time to time, informs the Licensee that she requires to be kept;

(c) on request from an authorised officer, produce his or her Licence for inspection by the authorised officer;

(d) upon becoming aware of the occurrence of any insolvency related event or, of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the Licence, notify the Director of that fact;

(e) within 28 days after the occurrence of any of the following events notify the Director of such an occurrence:

(i) any change in the persons having control of the Licence, or in the directors of the Licensee or in the directors of any body corporate having control of the Licensee; and

(ii) any change in the persons having any interest in the Licensee or in a 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% in aggregate in the Licensee; or

(III) having (or having had) an interest of more than 20% in aggregate in the Licensee, has increased or decreased that interest;

For the purposes of this subparagraph, control means the possession, directly or indirectly of the power to direct or cause the direction of the management policies whether through ownership of voting rights, by contract or otherwise;

(f) (i) where the Licensee is incorporated in the State:

(I) within 7 days after the date upon which it is required to be filed with the Registrar of Companies, pursuant to section 127 of the Companies Act, 1963,

furnish the Director with a copy of the annual return of the Licensee or any person who controls the Licensee;

(II) within 7 days of its circulation to the shareholders of the Licensee, furnish the Director with a copy of the annual report and accounts of the Licensee or any person who controls the Licensee;

(ii) where the Licensee is not incorporated in the State, furnish the Director with a copy of any returns, reports, accounts, or other information required to be prepared by the Licensee, or any person who controls the Licensee, in accordance with any laws under which the Licensee is incorporated or, at the request of the Director, a document to the like effect of any of the documents referred to at subparagraph (i), at such times and in such forms as the Director may specify from time to time in a notice served on the Licensee;

(g) on request from an authorised officer, permit the authorised officer at all reasonable times to inspect any records which the Director requires to be kept or which are kept by the Licensee in connection with the mobile radio system;

(h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate testing by the authorised officer of the system.

9. (1) Subject to the provisions of these Regulations, the Licensing Regulations as applicable and any requirements under applicable national or EC law, the Licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Director in respect of any matter which direction, requirement or notice is, in the opinion of the Director, appropriate having regard to the functions of the Director.

(2) Without prejudice to the generality of paragraph (1), the Licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Director in respect of the use or the cessation of use of any frequency channel, or in respect of an amendment to any characteristics used in the operation of a

licensed system, as particularised in Part IV of the Licence.

10. In this Licence –

“authorised officer” means a person appointed by the Director in writing to be an authorised officer for the purpose of the Regulations;

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

“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;

“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 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 under which the Licensee is incorporated;

“Licence” means a Licence under section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) for a mobile radio system or mobile radio systems as defined in the Regulations and cognate words shall be construed accordingly;

“Licensee” means the holder of a Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licences) Regulations, 1998 (SI No. 96 of 1998);

“licensed system” means a mobile radio system for which a Licence has been granted under the Regulations;

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

“mobile radio system” means a system using radio frequencies to provide wireless two way communication between two or more stations, at least one of which must be a mobile station, and being of a type set out in Part I of the Licence.

“station” means any apparatus for wireless telegraphy capable of being used for the purposes of transmitting and/ or receiving messages by means of radiated electro-magnetic waves;

“Telecommunications Licence” means a Licence under section 111 of the Act of 1983;

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

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

“the Director” means the Director of Telecommunications Regulation appointed under the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996);

“the Regulations” means the Wireless Telegraphy (Mobile radio systems) Regulations, 2002 (S.I. No. 435 of 2002).

PARTS

Part I

Types of mobile Radio System

Part II

Licensee

Part III

Addresses for Notices

Part IV

Description and Characteristics of Mobile Radio System

Part V

Technical Conditions for Mobile Radio Systems

Part VI

Loading Criteria, if applicable

Part VII

Roll-out Plan, if applicable

Part VIII

Licence Commencement and Termination Dates

SECOND SCHEDULE

Licence Fees for Types of Licensed Mobile Radio Systems

€625 per channel (up to 2 x 12.5 kHz) per base station on issue of the Licence, rising to €1,000 per annum thereafter.

Where a Licence is granted for a portion of a year the Licence fees to be paid by the Licensee shall be calculated as follows:

$$A \times (B / 12) = C$$

where A is the relevant annual Licence fee set out in this Schedule; B is the number of whole months for which the Licence is granted (if a Licence is granted for a period of less than one month then, for the purpose of these calculations only, the Licence shall be considered as a Licence granted for a period of one month); and C is the appropriate Licence fee to be paid.

GIVEN under my hand, this day of , 2002

Etain Doyle

Director of Telecommunications 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 day of , 2002

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 issuing of Licences for types of mobile radio systems intended for local or on-site use, which may, if appropriate, be licensed by the Director. Where other Regulations under the Act of 1926 apply to specific radio systems, those Regulations shall be used.