



STATUTORY INSTRUMENTS.

S.I. No. 554 of 2014



WIRELESS TELEGRAPHY (INTERIM GSM MOBILE TELEPHONY
LICENCE) REGULATIONS 2014

WIRELESS TELEGRAPHY (INTERIM GSM MOBILE TELEPHONY LICENCE) REGULATIONS 2014

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6 (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 (Interim GSM Mobile Telephony Licence) Regulations 2014.

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);

“Act of 2007” means the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007);

“Act of 2009” means the Broadcasting Act 2009 (No. 18 of 2009);

“Apparatus” means apparatus for wireless telegraphy as defined in section 2 of the Act of 1926 for the purpose of providing a Mobile Telephony Service and, in relation to a Licence, means the particular apparatus for wireless telegraphy to which the Licence relates;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2011 (S.I. 335 of 2011);

“Commission” means the Commission for Communications Regulation;

“Electronic Communications Network” and “Electronic Communications Service” have the same meanings as are set out in the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2011 (S.I. 333 of 2011);

“ETSI” means the European Telecommunications Standards Institute;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 9th December, 2014.

“EURIBOR” means the Euro Interbank Offered Rate;

“Framework Regulations” means the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2011 (S.I. 333 of 2011);

“GSM” means an electronic communications network that complies with the GSM standards as published by ETSI, in particular but not limited to EN 301 502 and EN 301 511;

“GSM Regulations of 2003” means Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. No. 339 of 2003);

“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 a Radiocommunications Service operating in accordance with a requirement under the International Telecommunications Union Radio Regulations, a regulation of an institution of the European Union or legislation giving effect to an act, or 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;

“ICNIRP” means the International Commission on Non-Ionising Radiation Protection;

“Licence” means the licence granted under these Regulations which permits the Licensee to keep, have possession of, install, maintain, work and use Apparatus in a specified place in the State;

“Licensee” means the holder of the Licence;

“Mobile Telephony Service” or “GSM Mobile Telephony Service” means a mobile telephony service corresponding to the GSM specifications;

“Original Licence” means a licence under the Wireless Telegraphy (GSM Mobile Telephony Licence) Regulations 1999 and 2003;

“Radiocommunications Service” means a service as defined in the Radio Regulations of the International Telecommunication Union involving the transmission, emission and or reception of radiowaves for specific telecommunication purposes;

“Radionavigation Service” means a service involving the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information related to their parameters, by means of the propagation properties of radio waves and used for the purposes of navigation, including obstruction warning; and

“Undertaking” means Telefónica Ireland Limited, a company with a registered office at 28-29 Sir John Rogerson’s Quay, Dublin 2.

- (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 Schedule to these Regulations, unless it is indicated that a 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; and
 - (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 2005 (No. 23 of 2005) applies to these Regulations.

Licences to which these Regulations apply

3. (1) These Regulations prescribe matters in relation to a Licence of the type detailed in the form of Licence contained in the Schedule hereto, application for the grant of which may be made hereunder by the Undertaking.

(2) The provisions of the GSM Regulations of 2003, and, in particular, Regulation 4(5) thereof, shall not apply to the Licence which may be granted under these Regulations and to which these Regulations apply.

Application for Licences and Form of Licences

4. (1) Application for a Licence to which these Regulations apply shall be made to the Commission in writing in such form as determined by the Commission.

(2) The Undertaking which may make an application under paragraph (1) of this Regulation shall furnish to the Commission such information as the Commission may reasonably require for the purposes of these Regulations, and if the Undertaking, without reasonable cause, fails to comply with this paragraph, the Commission may refuse to grant a Licence to the Undertaking.

(3) The Commission may grant a Licence to which these Regulations apply in accordance with the provisions of Regulation 9 of the Authorisation Regulations and on payment by the Undertaking of the fees prescribed in Regulation 9 of these Regulations.

(4) A Licence to which these Regulations apply 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 of Licence

5. (1) A Licence to which these Regulations apply, shall unless it has been withdrawn or had its duration amended under Regulation 7(2), be in force for the period 1 January 2015 to 12 July 2015 and shall then expire.

Conditions of Licence

6. It shall be a condition of a Licence to which these Regulations apply that the Licensee shall:

(1) ensure that it complies with the conditions contained within the Licence and these Regulations;

(2) ensure that the Apparatus, as appropriate, is used only on such radio frequency spectrum as may be specified in the Licence and that such radio frequencies shall be used in an effective and efficient manner;

(3) ensure that it makes payments of the fees as set out in Regulation 9 of these Regulations;

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

(5) ensure that non-ionising radiation emissions from the Apparatus are within the limits specified by the guidelines published by ICNIRP and that it complies with any radiation emission standards adopted and published from time to time by ICNIRP, any standards of the European Committee for Electrotechnical Standards and any standards which may from time to time be specified by national and European Community law;

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

(7) ensure that if the address of the Licensee or the person to whom the Licence has been assigned changes, the Licensee or assignee shall, as soon as possible, but within 28 days, notify the Commission in writing of the change;

(8) furnish such information and reports relating to the operation of the Apparatus as may be requested by the Commission from time to time;

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

(10) ensure that the Apparatus or any part thereof, shall be installed, maintained, operated and used so as not to cause harmful interference;

(11) ensure that the installation of the Apparatus 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;

(12) comply 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;

(13) ensure that, save as may be required by law, physical access to, and use of, the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee;

(14) upon becoming aware of any event likely to materially affect their ability to comply with these Regulations, or any conditions set out or referred to in the Licence, notify the Commission of that fact in writing within 5 business days; and

(15) comply with all obligations under relevant international agreements relating to the use of Apparatus or the frequencies to which they are assigned.

Enforcement, Amendment, Withdrawal and Suspension

7. (1) Enforcement by the Commission of compliance by the Licensee with conditions attached to its Licence shall be in accordance with the Authorisation Regulations, and any other requirements under a regulation of an institution of the European Union or legislation giving effect to an act, or 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.

(2) The Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment, including any amendment to the duration of the Licence, shall be made subject to and in accordance with the Authorisation Regulations and any other requirements under a regulation of an institution of the European Union or legislation giving effect to an act, or 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.

(3) 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 from time to time in accordance with the Authorisation Regulations and any other requirements under a regulation of an institution of the European Union or legislation giving

effect to an act, or 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.

(4) 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.

(5) The Licence may be suspended or withdrawn by the Commission in accordance with the Authorisation Regulations, and any other requirements under a regulation of an institution of the European Union or legislation giving effect to an act, or 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.

Powers of Authorised Officers

8. (1) The Commission may appoint such members of its staff 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 their appointment, be furnished by the Commission with a certificate of their 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 appointed hereunder may exercise the powers conferred by section 39(3) of the Act of 2002 on authorised officers appointed under that Act.

Licence Fees

9. (1) The Licensee shall pay in respect of 14.4 MHz duplex radio frequency in the 1800 MHz band as specified in the Licence, a fee of €1,362,635.35 for the period 1 January 2015 to 12 July 2015.

(2) The fees specified in paragraph (1) of this Regulation shall be paid to the Commission at the time of the making of an application under Regulation 4(1), and prior to a grant of the Licence hereunder by way of banker's draft or such other means and on such other terms, if any, as the Commission may decide. Where the date of payment falls on a Saturday, a Sunday or a public holiday, payment shall be made on or before the last working day before the date on which payment would otherwise have fallen due.

(3) If the Licence is suspended or withdrawn the Licensee shall not be entitled to be repaid any part of the fee paid by the Licensee under this Regulation, but shall still be liable to pay any sums, including interest, that are outstanding.

(4) If the Licence is amended under Regulation 7(2) or Regulation 7(4), the fee specified in paragraph (1) of this Regulation shall be paid by the Licensee, or refunded to the Licensee, on a pro-rata basis, based on the proportion of the unexpired period of the Licence on the date of the amendment.

(5) Where payment is not made in due time, then interest shall be payable by the Licensee at the appropriate EURIBOR rate standing on the fee or part thereof in respect of the period between the date when such fee or part fell due and the date of payment of such fee or part.

(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.

Licensee to satisfy all Legal Requirements

10. (1) The Licence which may be granted pursuant to these Regulations shall not grant to the Licensee any right, interest or entitlement other than the right to keep, install, maintain, work and use, at a specified location or locations in the State, apparatus for wireless telegraphy for the purpose of the provision of a GSM Mobile Telephony Service.

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

SCHEDULE

WIRELESS TELEGRAPHY ACT 1926

**WIRELESS TELEGRAPHY (INTERIM GSM MOBILE TELEPHONY
LICENCE) REGULATIONS 2014**

Mobile Telephony Licence

Licence under section 5 of the Wireless Telegraphy Act 1926, to keep have possession of, install, maintain, work and use apparatus for wireless telegraphy for the purpose of providing a GSM Mobile Telephony service.

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 5 (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) of the Wireless Telegraphy Act 1926 (No. 45 of 1926), hereby grants to the Licensee specified _____ of _____, authorisation to keep, have possession of, install, maintain, work and use apparatus for wireless telegraphy as specified in Schedule 2 to this Licence, in the places specified in Schedule 1 to this Licence and subject to the terms and conditions and restrictions as set out in the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations 2014 (S.I. No. 554 of 2014) (“the Regulations”), including, but not limited to, the following;

1. The Licensee shall ensure that it complies with the geographical and technical conditions contained within Schedules 1 to 3 to this Licence.
2. The Licensee shall ensure that it complies with all of the commitments contained within Schedule 4 to the Licence which were made by the Licensee in the course of a comparative evaluation selection procedure, prior to the granting of the Original Licence.

This Licence shall come into operation on 1 January 2015 and, unless previously withdrawn, shall expire on 12 July 2015 or on such earlier termination date as may be decided upon by the Commission and given effect by way of a Licence amendment under Regulation 7(2) of the Regulations.

Given under the Official Seal of the Commission for Communications Regulation, this _____ 2014

Signed: _____

For and on behalf of the Commission for Communications Regulation

Schedule 1

Licensee_____

Places at which the Licensee is authorised by this Licence to keep and have possession of Apparatus for a GSM Mobile Telephony Service.

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 Made by the Licensee Prior to the Grant of the Original Licence.

Part 1

Licence Commencement Date

Part 2

The Licensed Mobile Services

Part 3

Access to the Emergency Services

Part 4

Service Quality, Performance Standards and Obligations

Part 5

Roaming

Part 6

Other Conditions

(Other relevant commitments made by the Licensee in the Original Licence)



GIVEN under the Official Seal of the Commission for Communications Regulation this,
8 December 2014.

KEVIN O'BRIEN,
Chairperson for and on Behalf of the Commission of Communications Regulation.

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



GIVEN under the Official Seal of the Minister for Communications, Energy and Natural Resources this,
4 December 2014.

ALEX WHITE,
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 matters in regard to licences that may be granted under section 5 of the Wireless Telegraphy Act 1926 (as amended), to keep and have possession of, apparatus for wireless telegraphy in a specified place in the State for the purpose of the provision of a GSM Mobile Telephony Service, including matters relating to their form, the period(s) during which they continue in force, the fees payable in respect of them, and the conditions and restrictions applying to them.

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