

STATUTORY INSTRUMENT

S.I. No. 114 of 2005

Wireless Telegraphy (Third Party Trial Licence) Regulations, 2005

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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), and with regard to section 6(2) of the Wireless Telegraphy Act, 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. (1) These Regulations may be cited as the Wireless Telegraphy (Third Party Trial Licence) Regulations, 2005 .
- (2) These Regulations will come into force on 1 March 2005.

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 specified frequency bands for the purpose of the provision of a Third Party Trial Licence service;

“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 authorised under Regulation 4 of S.I. 306 of 2003;

“Commission” means the Commission for Communications Regulation established under the act of 2002;

“Framework Regulations” means the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2003 (S.I. 307 of 2003);

“Force majeure event” means any of the following:

- (a) fire, flood, earthquake, elements of nature or act of god;
- (b) riot, civil disorder or act of war; and
- (c) strikes or other industrial action (unless the action affects only the licensee);

“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 Undertaking;

“Licensee” means the holder of a Licence;

“Restricted Remuneration” means the amount which may be charged by the licensee to Third Party Participants for the provision of the Third Party Trial. The amount charged shall not be greater than the average cost of providing the Third Party Trial to Third Party Participants;

“Third Party Participants” means persons other than the licensee, its employees servants or agents who participate in the Third Party Trial;

“Third Party Trial” means the provision of an electronic communications network or an electronic communications service, usually for restricted remuneration to a limited number of Third Party Participants, as specified in the licence, for the purpose of testing applications and apparatus.

- (2) In these Regulations, a reference to an enactment or regulation may 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 Acts, 1937 to 1997, apply to these Regulations.

Application for Licences and Form of Applications and Licences

3. (1) An Application for a Licence will be made to the Commission and shall be in writing in such form as may be determined by the Commission.
- (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 and, if the person,

without reasonable cause, fails to comply with this paragraph, the Commission may, refuse to grant a Licence to the person.

(3) The Commission may grant a Licence in accordance with the provisions of Regulation 9 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 of Licences

4. (1) A Licence shall (unless it has been revoked) be in force for a maximum period of one year from the date on which it comes into operation and shall then expire.

(2) Where a licence expires under Paragraph 1 of this regulation the licensee may apply for a new licence in accordance with Regulation 3.

Conditions of Licences

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

(1) the Licensee will ensure that it complies with the geographical and technical conditions contained within the Parts 1 and 3 to the licence;

(2) the Licensee will ensure that it makes payments of the fees as outlined in Regulation 9 of these regulations;

- (3) the Licensee may 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) the Licensee will ensure that non-ionising radiation emissions from each radio installation 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 which may from time to time be specified by the European Union and that the wireless telegraphy apparatus 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) During major disasters the Licensee shall comply with any decisions, determinations, requirements, specifications, notifications and directions issued by the Commission from time to time to ensure communications between emergency services and authorities and broadcasts to the general public;
- (6) if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Commission in writing of the change;

- (7) 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;
- (8) the Licensee complies with obligations under relevant international agreements relating to the use of apparatus or the frequencies to which they are assigned;
- (9) the Licensee shall reimburse the Commission for any costs reasonably incurred in the investigation of harmful interference relating to the licensed apparatus.

Withdrawal, amendment, revocation and suspension

- 6. (1) The Commission may amend or withdraw the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment or withdrawal 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.

- (4) Without prejudice to paragraph (1) of this Regulation, where the Third Party Trial does not constitute an electronic communications network or an electronic communications service for the purpose of the Framework Regulations, the Commission may, where there is serious and continuous non-compliance with the terms of the licence and following representations, withdraw or suspend 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 his or her appointment, be furnished by the Commission with a certificate of his or her 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 the methods of payment set out in this Regulation, the fees set out in Regulations 9 are payable in respect of Licences granted by the Commission pursuant to section 5 of the Act of 1926.
- (2) Fees shall be paid to the Commission of Communications Regulation by way of banker's draft or such other means and on such terms (including terms as to the place of payment) as the Commission may decide.
- (3) An amount payable by a person in respect of a fee under these Regulations may be recovered by the Commission from the person as a simple contract debt in any court of competent jurisdiction.
- (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 these Regulations but shall still be liable to pay any sums (including interest) outstanding.
- (5) Where payment is not made in due time, then interest shall be payable by the licensee at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840 (1840 c.105), 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.

Spectrum Fees

9. The following fees shall apply on the grant of a Licence subject to Regulation 3(3) :

(1) Where the Licence relates to Apparatus for use for the provision of a Third Party Trial, the Licensee shall pay €500 (Five Hundred Euro) for a 12 month 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, B is the number of whole months, or parts thereof, for which the Licence is granted and C is the appropriate Licence Fee to be paid;

(3) Notwithstanding Paragraph (2), the minimum licence fee will be €100.

Licensee to satisfy all Legal Requirements

10. 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 the service and for the exercise of his or her rights or discharge of his or her obligations under the Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of the Licence and the provision of the service and the Commission shall bear no responsibility for such costs, expenses or commitments.

Force Majeure

11. If a force majeure event occurs which prevents the licensee from complying with any of the provisions of these Regulations or any of the conditions set out or referred to in the licence:

(1) the Licensee shall, as soon as reasonably practicable, notify the Commission of that fact, of the nature of the event and of the manner in which and the extent to which the licensee is prevented from so complying, and

(2) the obligation to comply with the provisions or conditions shall be suspended, for so long as the event continues to occur but in each case only if and to the extent that, the inability to comply could not have been prevented by taking steps specifically required under those provisions or conditions or by taking other reasonable precautions and the inability cannot reasonably be overcome by the Licensee.

Licences to which these Regulations apply

12. These Regulations apply to a Licence to keep, have possession of, install, maintain, work and use apparatus and applications for wireless telegraphy for the purpose of a Third Party Trial.

Schedule

WIRELESS TELEGRAPHY ACT, 1926

WIRELESS TELEGRAPHY (THIRD PARTY TRIAL LICENCE) REGULATIONS, 2005

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 a Third Party Trial

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 (Third Party Trial Licence) Regulations, 2005 (S.I. No. of 2005)

The Commission for Communications Regulation, grants the following Licence to:
_____ of _____

1. This Licence will come into operation on the ____ day of ____, 20__, and will expire on the ____ day of ____, 20 .
2. The Licensee will ensure that it complies with the geographical and technical conditions contained within the Parts 1-3 to this Licence.
3. The Licensee will ensure that it makes payments of the fees as outlined in the Regulations.
4. The Licensee will ensure that the number of third party participants in limited to the number set out in Part 4 of this licence.

Part 1

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

Part 2

The apparatus for wireless telegraphy to which this Licence applies

Part 3

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

Part 4

Number of third party of participants.

The number of third party participants shall not exceed .

GIVEN under the official seal of the Commission for Communications Regulation, this 1st day of March, 2005

L.S.

Isolde Goggin, Chairperson

For and 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 25th day of February, 2005

L.S.

Noel Dempsey 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 Third Party Trials, for the regulation of such apparatus and for the payment of fees by persons granted Licences for that purpose.