



STATUTORY INSTRUMENTS

S.I. No. 324 of 2008



WIRELESS TELEGRAPHY (USE OF THE BAND 380-400MHz BY
EMERGENCY SERVICES) REGULATIONS, 2008

(Prn. A8/1277)

WIRELESS TELEGRAPHY (USE OF THE BAND 380-400MHz BY
EMERGENCY SERVICES) REGULATIONS, 2008

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 to the Commission for Communications Regulation by section 9(1) of the Communications Regulation Act, 2002 (No. 20 of 2002), and with the consent of the Minister for Communications, Energy and Natural Resources pursuant to section 37 of the Communications Regulation Act, 2002, hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (Use of the Band 380-400MHz by Emergency Services) Regulations, 2008.

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

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

“Authorised officer” means a person appointed by the Commission, in writing, pursuant to Regulation 18(1) of these Regulations;

“Commission” means the Commission for Communications Regulation;

“Emergency service” means An Garda Síochána, the fire brigade services, the ambulance services, the boat and coastal rescue services (including the rescue services provided by the Air Corps), and the mountain and cave rescue services;

“Harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a lawfully operating radiocommunications service;

“Insolvency related event” in respect of a licensee means any of the following:

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th August, 2008.*

- (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 granted by the Commission under section 5 of the Act of 1926;

“Licensee” means the holder of a licence granted by the Commission under section 5 of the Act of 1926;

“Managed Digital Radio Services network” (“MDRS network”) means the network that will be used exclusively to provide digital radio communications services to State security and emergency services and to non-commercial bodies engaged in the provision of services to State agencies. The MDRS Network may also be used by any electricity or gas utility undertaking that is making essential and urgent repairs to its network, in an emergency situation only;

“Regulations” means the Wireless Telegraphy (Use of the Band 380-400MHz by Emergency Services) Regulations, 2008;

“Wireless telegraphy” and “apparatus for wireless telegraphy” shall have the same meanings as are set out in section 2 of the Act of 1926.

(2) In these Regulations unless the contrary intention appears:

- (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; and
- (e) A reference to a licence is a reference to a licence granted under these Regulations.

(3) The Interpretation Act, 2005 (No. 23 of 2005) applies to these Regulations.

Licences to which these Regulations apply

3. (1) These Regulations apply to licences to keep, install, maintain, work and use, anywhere in the State, apparatus for wireless telegraphy that is used for the provision of electronic communications services in the spectrum bands 380-385MHz and 390-395MHz.

Limitation of Licence

4. (1) A licence granted under these Regulations does not grant to the licensee named therein any right, interest or entitlement other than the right to keep, install, maintain, work and use apparatus for wireless telegraphy for the provision of electronic communications services in the spectrum bands 380-385MHz and 390-395MHz.

(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 as may be specified by the Commission from time to time.

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

(3) Following the assessment of an application for a licence, the Commission may issue a licence to any person or may, subject to these Regulations and any requirements under national and EC law, refuse to issue a licence.

Addresses for Notices

6. (1) Where a licensee is domiciled in the European Union, the licensee shall, on the grant of his or her licence, furnish in writing to the Commission the address and, where appropriate, fax number or email address, or both, within the EU to which notices and other documents under these Regulations may be delivered to him or her, or may be sent by or on behalf of the Commission by post or by any telecommunications service operated in accordance with the Act of 1983 and a licensee shall, as occasion requires, notify the Commission of any change in such address, fax number, or e-mail address.

(2) Where a licensee is domiciled outside the EU, the licensee shall, on the grant of his or her licence, furnish in writing to the Commission an address in Ireland to which notices and other documents under these Regulations may be delivered to him or her or sent by or on behalf of the Commission by post or by any telecommunications service operated in accordance with the Act of 1983, and a licensee shall, as occasion requires, notify the Commission of any change in such address, fax number, or e-mail address.

(3) A notice or document delivered, or sent by post or any such telecommunications service to any address, fax number or e-mail address furnished in accordance with paragraph (1) or (2) shall be deemed for the purposes of these Regulations to have been duly served by the Commission.

(4) 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 as which the sender's fax system generates the message confirming successful transmission of the total number of pages of the notice or document.

(5) Where the service of any notice or document is effected by email 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 as which the sender's information technology system registers the successful transmission of the notice or document by email.

Form of Licence

7. A licence shall be in such form as the Commission may, from time to time, determine in accordance with applicable national or EC law.

Continuance in Force of Licences

8. Subject to these Regulations, every licence shall, unless previously surrendered by the licensee, or unless or until it is revoked or renewed by the Commission, and subject to any suspension thereof, continue in force for such a period (not being more than one year) as shall be specified in the licence, beginning on the date of the grant of the licence.

Renewal of Licences

9. (1) Subject to these Regulations, or any other law, the Commission may renew any licence.

(2) Any licence that is renewed shall, subject to these Regulations and unless previously surrendered by the licensee or unless or until it is revoked or subsequently renewed by the Commission, and subject to any suspension thereof, continue in force for such period (not being more than one year) beginning on the applicable anniversary of the date on which the licence was first granted which date shall be specified in the licence.

(3) Any application for renewal of a licence shall be made at least 28 days before the date of expiration of the licence and shall be accompanied by the applicable licence renewal fee, as specified in the Schedule, and such information as the Commission may reasonably require for the purpose of assessing the licence renewal application.

(4) In considering whether to renew a licence, the Commission shall have particular regard to,

- (a) whether the licensee complied with these Regulations and with any conditions attached to the expiring licence;
- (b) the management and efficient use of radio spectrum; and
- (c) 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. (1) The fees set out in the Schedule shall be paid on the grant or renewal of a licence. The fee set out in the Schedule shall be indexed to reflect the annual rate of inflation, using the Consumer Price Index published by the Central Statistics Office. Indexation shall first occur on the 12-month anniversary of the date on which a licence was first granted and shall occur annually thereafter.

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

(3) Fees shall be paid to the Commission by way of banker's draft or such other means and on such terms (including terms as to the date and place of payment) 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 of payment.

(4) If a licence is withdrawn, suspended or revoked, then the licensee shall not be entitled to be repaid any part of the fee paid by the licensee but shall still be liable to pay any sums (including interest) that are outstanding.

(5) An amount payable by a licensee may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction.

(6) Where payment by the licensee 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 thereof fell due and the date of payment of such fee or part.

Licence Conditions

11. The following conditions shall be observed by the holder of a licence:

- (a) the licensed apparatus for wireless telegraphy shall be used only for the provision of electronic communications services in the spectrum bands 380-385MHz and 390-395MHz;
- (b) the licensed apparatus for wireless telegraphy 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 licensed apparatus for wireless telegraphy shall not be used in a manner that could infringe any privilege which is held by the Minister for Communications, Energy and Natural Resources under the Telegraph Act, 1869;
- (d) the licensee shall not, save with the written prior consent of the Commission, assign his or her licence or any of the rights conferred by it or lease or let his or her licence or otherwise transfer to another person any benefit of the licence;
- (e) the licensee shall ensure that all apparatus for wireless telegraphy used on or associated with the MDRS network complies with the standards set for such equipment by the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. No. 240 of 2001) and any other standards that may, from time to time, be specified by the European Telecommunications Standards Institute (ETSI) or any other appropriate body;
- (f) a licensee shall ensure that-
 - (i) non-ionising radiation emissions from the licensed apparatus for wireless telegraphy 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 other radiation emission standards specified by law; and
 - (ii) the licensed apparatus for wireless telegraphy is not installed or operated at a location in such a manner as to cause the aggregate of non-ionising radiation emissions to exceed the limits specified by the guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by

ICNIRP or its successors, from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any other radiation emissions standards specified by law;

- (g) a licensee shall ensure that the licensed apparatus for wireless telegraphy or any part thereof shall be kept, installed, maintained, worked and used in such a manner as not to cause harmful interference, 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) a licensee shall ensure that the licensed apparatus for wireless telegraphy is kept, installed, maintained, worked and used in such a manner as to ensure that the safety of persons or property is not thereby endangered.
- (i) Where the Commission is satisfied that a licensee has failed to comply with any provision of these Regulations or a condition of his or her licence, and the Commission has served on the licensee a notice prohibiting the use of specified licensed apparatus by such date and time as may be specified in the notice, then the licensee shall cease to use that apparatus on or before the applicable date and time until such notice has been withdrawn by the Commission, and the licensee shall take such measures as may be specified by the Commission in the notice;
- (j) a licensee shall ensure that, save as may be required by law, access to, and use of, the licensed apparatus for wireless telegraphy is restricted to the licensee, employees and agents of the licensee, and persons authorised by or on behalf of the licensee;
- (k) a licensee shall take all reasonable measures to prevent any message or information which he or she is not authorised to receive from being received by the licensed apparatus for wireless telegraphy;
- (l) if any message or information that a licensee is not authorised to receive is intentionally received by means of the licensed apparatus for wireless telegraphy then the licensee shall not:
 - (i) make known or allow to be made known its contents, origin, destination or existence or the fact of its receipt, to any person other than an authorised person; or
 - (ii) reproduce in writing or otherwise make use of, or copy such message or information or allow it to be reproduced in writing, made use of or copied;
- (m) a licensee shall upon becoming aware of any event likely to materially affect his or her ability to comply with these Regulations, or any conditions set out or referred to in the licence, notify the Commission of that fact;

- (n) a licensee shall observe good site engineering practice in accordance with such guidelines as may be set out by the Commission from time to time; and
- (o) the Managed Digital Radio Services network may only be used by State security and emergency services, non-commercial bodies engaged in the provision of security and emergency services or related ancillary services, and electricity or gas utility undertakings when they are making essential and urgent repairs to their network in an emergency situation (to clarify, such utility undertakings cannot use the MDRS Network when carrying out regular repair and maintenance work).

Information and Inspections

12. (1) A licensee shall—

- (a) furnish to the Commission such information relating to the licensed apparatus for wireless telegraphy apparatus as the Commission may, from time to time, by notice in writing served on the licensee, require;
- (b) keep for such period as the Commission may specify such records, including a record of the premises where any licensed apparatus, or part thereof, is located, as the Commission may, from time to time, require the licensee to keep;
- (c) on request by an authorised officer of the Commission, produce his or her licence for inspection by such officer;
- (d) upon becoming aware of the occurrence of any insolvency related event or other event likely to materially affect his or her ability to comply with these Regulations or any condition set out in the licence, notify the Commission of that fact;
- (e) within 28 days after the occurrence of any of the following events notify the Commission of such an occurrence:
 - (i) any change in the identity of the persons having control of the licence, or in a case where the licensee is a body corporate, in the identity of the directors of the licensee or of any body corporate having control of the licensee; and/or
 - (ii) any change in the identity of any persons having any interest in the licensee or in any body corporate having direct or indirect control of the licensee

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

- (f) (i) where the licensee is incorporated in the State:

- (i) furnish the Commission with a copy of the annual return of the licensee, or of any person who controls the licensee, within 7 days after the date upon which it the annual return is required to be filed with the Registrar of Companies pursuant to section 127 of the Companies Act, 1963
 - (ii) furnish the Commission with a copy of the annual report and accounts of the licensee, or of any person who controls the licensee, within 7 days of its circulation to the shareholders of the licensee;
 - (ii) where the licensee is not incorporated in the State furnish the Commission with a copy of any returns, reports, accounts, or other information required to be prepared by the licensee, or by any person who controls the licensee, in accordance with any laws under which the licensee is incorporated or to which the licensee is subject or furnish the Commission with a document to the like effect of the documents referred to in subparagraph (i), at such times and in such form as the Commission may from time to time specify 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 Commission requires to be, or which are, kept by the licensee in connection with the apparatus; and
 - (h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate the testing by the authorised officer of the licensed apparatus for wireless telegraphy.
- (2) (a) The Commission 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 relating to the operation of licensed apparatus for wireless telegraphy, in order 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 licensed apparatus for wireless telegraphy, or to inspect, take copies of and acquire such information, as may reasonably be required for the purposes of carrying out the audit.
- (b) Any costs associated with an independent audit conducted under this paragraph shall be the responsibility of the licensee.
- (3) Any information furnished to the Commission under these Regulations or under and in accordance with the licence, may if the Commission considers it proper or appropriate so to do, be published by the Commission.

Enforcement, Amendment, Revocation and Suspension

13. (1) The Commission may, in a proportionate manner, amend a licence where it is objectively justifiable.

(2) Without prejudice to paragraph (1) the Commission may, after serving notice on a licensee specifying reasons and after affording the licensee a reasonable opportunity to make representations and after having considered any such representations, amend, suspend or revoke a licence in any of the following circumstances:

- (a) where a licensee fails or refuses to comply with any term or condition of the licence including any terms or conditions imposed by virtue of these Regulations;
- (b) where a licensee fails or refuses to comply with a direction of the Commission or hinders or obstructs an authorised officer in the performance of his or her functions;
- (c) where a licensee contravenes any provision of these Regulations;
- (d) where the application made by a licensee for the grant or renewal of the licence was false or misleading in any material respect;
- (e) where, in the opinion of the Commission, such revocation or suspension is required for the purpose of complying with any law;
- (f) in cases where a licensee is an individual, where a receiving order for bankruptcy has been made in respect of the estate of the licensee;
- (g) in cases where a licensee is a company within the meaning of the Companies Acts 1963 to 2001, where an order for its winding up has been made or a resolution for a voluntary winding up has been made or a receiver of the property of the company has been appointed or an examiner to the company has been appointed or, if the licensee is not incorporated in the State or not registered under the Companies Acts 1963 to 2001, where it is subject to any equivalent procedure;
- (h) where a licensee notifies the Commission that he or she does not intend to use the apparatus to which the licence relates for a licensed purpose;
- (i) where a licensee agrees with the Commission that the licence ought to be revoked; or
- (j) where a licensee fails to use the licensed apparatus for wireless telegraphy prior to the date of renewal, and for any period of more than 60 consecutive days after that date;

Compliance

14. (1) Subject to the provisions of these Regulations and any requirements under national or EC law, a licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Commission in respect of any matter where such direction, requirement or notice is appropriate having regard to the functions of the Commission.

(2) Without prejudice to the generality of paragraph (1), a licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Commission 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

15. (1) The Commission may appoint such members of the staff of the Commission as it considers appropriate to be authorised officers for the purpose 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 him or her by the Act of 2002.

SCHEDULE

The fee for an annual licence granted under these Regulations shall be €100,000 for each 2 x 1MHz of spectrum allocated with that licence. Fees shall be calculated on a pro rata basis according to the amount of spectrum allocated; for example, if 1 x 1MHz is allocated to a licence then the applicable licence fee would be €50,000. Fees shall be indexed to reflect the annual rate of inflation using the Consumer Price Index published by the Central Statistics Office.



GIVEN under the official seal of the Commission for Communications Regulation,
15 August 2008

ALEX CHISHOLM
Commissioner for Communications Regulation

For and on behalf of the Commission for 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
15 August 2008

MARTIN BRENNAN
On Behalf of Minister for Communications, Energy and
Natural Resources

A person authorised under Section 15 of the Ministers and Secretaries Act 1924 to authenticate the seal of the 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 provide for the licensing of national digital radio systems within the frequency ranges 380-395MHz and 390-395MHz for use by emergency services.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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