



STATUTORY INSTRUMENTS.

S.I. No. 214 of 2013



WIRELESS TELEGRAPHY (BROADBAND WIRELESS ACCESS
LOCAL AREA LICENCE) REGULATIONS 2013

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LOCAL AREA LICENCE) REGULATIONS 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) (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. (1) These Regulations may be cited as the Wireless Telegraphy (Broadband Wireless Access Local Area Licence) Regulations 2013.

(2) These Regulations shall cease to have effect on 31 July 2017.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

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

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

“Broadband Wireless Access” or “BWA” means radio access for the provision of electronic communications services between a single base station at a fixed location and multiple fixed, nomadic or mobile subscriber terminal stations where the base station is connected to an electronic communications network;

“Broadband Wireless Access apparatus” or “BWA apparatus” means apparatus for wireless telegraphy used for BWA consisting of a base station or stations at specified fixed locations which are capable of communicating with subscriber terminal equipment at various locations in the frequency band 3400 to 3800 MHz;

“BWA apparatus record” means a record maintained by a licensee pursuant to Regulation 11(1)(o);

“Commission” means Commission for Communications Regulation;

“fixed” means the location of the terminal equipment described does not change;

“harmful interference” means interference which endangers the functioning of a radio navigation service or other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th June, 2013.*

operating in accordance with a requirement under the International Telecommunication Union Radio Regulations, a Regulation of the European Union or legislation giving effect to an act, or a 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;

“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 of the jurisdiction under which the licensee is incorporated;

“licence” means a licence for Broadband Wireless Access apparatus granted under section 5 of the Act of 1926;

“licensee” means the holder of a licence for the time being in force;

“member of the staff” means a person appointed to be a member of the staff of the Commission under section 20 of the Act of 2002;

“mobile” means that the location of the terminal equipment described may change while transmitting or receiving signals for wireless telegraphy;

“nomadic” means that the location of the terminal equipment described may change but not while transmitting or receiving signals for wireless telegraphy;

“terminal equipment” means a product enabling communication, or a relevant component thereof, which is intended to be connected directly or indirectly by any means whatsoever to interfaces of electronic communications networks (that is to say telecommunications networks used wholly or partly for the provision of publicly available telecommunications services).

(2) In these Regulations, a reference to an enactment or Regulations shall be construed as a reference to the enactment or Regulations as amended or extended by or under any subsequent enactment or Regulations, including these Regulations.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1926 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act.

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act.

(5) A word or expression that is used in these Regulations and that is also used in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations.

Licences to which these Regulations apply

3. These Regulations apply to licences granted under section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use Broadband Wireless Access apparatus in accordance with the terms and conditions, as set out in Regulation 11, to be observed by the holders of such licences subject to which such licences are deemed to be granted.

Limitation of licence

4. (1) A licence does not grant to the licensee any right, interest or entitlement other than the right to keep and have possession of Broadband Wireless Access apparatus.

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

Applications for licences

5. (1) Any application for a licence to which these Regulations apply shall be in such form as may, from time to time, be specified by the Commission and shall include the name, address, and contact details of the applicant and a description of the Broadband Wireless Access apparatus in respect of which the licence is sought.

(2) In addition to any information provided under paragraph (1), an applicant for a licence shall, if so requested by the Commission, furnish such additional

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 made under this paragraph.

Addresses for notices and serving of notices

6. (1) Where a licensee is ordinarily resident in the European Union, the licensee shall, on the grant of his, her or its licence, furnish in writing to the Commission the address and, where appropriate, fax number or e-mail address, or both, within the European Union to which notices and other documents under these Regulations may be delivered to the licensee or sent by or on behalf of the Commission and shall, as occasion requires, so furnish any change in such address, fax number or e-mail address.

(2) Where a licensee is ordinarily resident outside the European Union, the licensee shall, on the grant of his, her or its licence, furnish in writing to the Commission an address in the State to which notices and other documents under these Regulations may be delivered to the licensee or sent by or on behalf of the Commission and shall, as occasion requires, so furnish any change in such address.

(3) For the purposes of these Regulations, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office and every other body corporate and every incorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A notice or document delivered, or sent by post or electronic communication (within the meaning assigned by section 2 of the Electronic Commerce Act 2000 (No. 27 of 2000)) or sent by facsimile 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.

(5) Where the service of any notice or document is effected by fax or e-mail in accordance with paragraph (1), 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 or e-mail system generates the message confirming successful transmission of the total number of pages of the notice or document.

Form of licence

7. A licence to which these Regulations apply shall be in the form specified in Schedule 1, 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.

Period during which licences continue in force

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 a period of one year.

Renewal of licences

9. (1) Subject to paragraph (5) each licence, upon reaching its annual date of expiration, may be renewed by the Commission upon payment of the prescribed fees, unless the licence has previously been surrendered by the licensee or revoked or suspended by the Commission and subject to any subsequent surrender, revocation or suspension thereof, every licence shall continue in force for a further period of up to one year beginning on the date of renewal of the licence.

(2) 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—

- (a) such a renewal fee as is specified in Schedule 2,
- (b) the BWA apparatus record, and
- (c) such information as the Commission may reasonably require for the purpose of assessing the application for renewal and ascertaining the operability of the BWA apparatus.

(3) In considering whether to renew a licence under this Regulation, the Commission shall have particular regard to—

- (a) whether the licensee complied with these Regulations and with any conditions attached to the expiring licence pursuant to these Regulations,
- (b) the management and efficient use of radio spectrum, and
- (c) the avoidance of harmful interference.

(4) The granting or renewal of a licence shall not be construed as warranting that the licence shall be renewed at any time in the future.

(5) All licences to which these Regulations apply shall expire in full at midnight on 31 July 2017 and such licences shall not be renewed nor shall they remain in effect following that date and all rights and entitlements under such licences, including all spectrum rights of use, shall cease as and from that date.

Licence fees

10. (1) The fees set out in Schedule 2 are hereby prescribed as the fees to be paid in respect of a licence to which these Regulations apply.

(2) The Commission will not grant or renew any licence to which these Regulations apply until the fee for such licence has been paid in full.

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

(4) Licence fees shall be paid to the Commission by way of banker's draft or electronic funds transfer or such other means as the Commission may decide.

Where the date on which payment of fees is due 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 is due.

Licence terms and conditions

11. (1) The following are the terms and conditions to be observed by the holder of a licence to which these Regulations apply and subject to which any such licence is deemed to be granted—

- (a) in the event that the licence has not expired on a date prior to midnight on 31 July 2017, it shall expire in full at midnight on that date and shall not be renewed nor shall it remain in effect following that date and all rights and entitlements under the licence, including all spectrum rights of use, shall cease as and from that date;
- (b) the BWA apparatus to which the licence relates 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 all BWA apparatus operated by the licensee complies with the essential requirements of the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations 2001 (S.I. No. 240 of 2001), the technical requirements set out in European Commission Decision 2008/411/EC or any subsequent revision of that Decision, and any other standards that may, from time to time, be specified by the European Commission;
- (d) the licensee shall not, without the prior written 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;
- (e) the licensee shall ensure that—
 - (i) non-ionising radiation emissions from the BWA apparatus operated by the licensee are within the limits specified in 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 the 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 BWA apparatus operated by the licensee 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 in the guidelines published by the ICNIRP or its successors from time to time, or any radiation emission standards of the European

Committee for Electrotechnical Standards and any other radiation emissions standards specified by law;

- (f) the BWA apparatus operated by the licensee, or any part thereof, shall be installed, maintained, operated and used in such a manner as not to cause harmful interference;
- (g) the BWA apparatus operated by the licensee, or any part thereof, shall be installed, maintained and operated in such a manner as to ensure that the safety of persons or property is not thereby endangered;
- (h) the licensee shall comply with a “Notice of Cessation” served on it by the Commission. For the purpose of this subparagraph, a Notice of Cessation is a notice served by the Commission where the Commission is satisfied that the licensee has failed to comply with its licence conditions and requiring that the use of such apparatus or part thereof, as may be specified in the notice, shall cease forthwith, or on or before such date and time as may be so specified, or requiring the licensee to take any measures which may be specified by the Commission;
- (i) save as may be required by law, access to, and use of, the BWA apparatus to which the licence relates is restricted to the licensee, employees and agents of the licensee, and persons authorised by or on behalf of the licensee;
- (j) 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 BWA apparatus to which the licence relates;
- (k) if any message or information that a licensee is not authorised to receive is intentionally received by means of BWA apparatus to which the licence relates, 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;
- (l) the licensee shall upon becoming aware of any event likely to materially affect his, her or its ability to comply with these Regulations, or any conditions set out or referred to in the licence, notify the Commission of that fact;
- (m) the licensee shall observe good site engineering practice in accordance with such guidelines as may be set out by the Commission, from time to time, in that regard;

- (n) the licensee shall furnish to the Commission such information relating to any licensed BWA apparatus as the Commission may, from time to time, by notice in writing served on the licensee, require;
- (o) the licensee shall keep for such period as the Commission may specify such records, including a record of the premises where any licensed BWA apparatus other than terminal equipment is located, as the Commission may, from time to time, require the licensee to keep;
- (p) the licensee shall, on request from the Commission, produce his, her or its licence for inspection;
- (q) the licensee shall, upon becoming aware of the occurrence of any insolvency related event or of any other event likely to materially affect his, her or its ability to comply with these Regulations or any conditions set out or referred to in the licence, notify the Commission of that fact;
- (r) the licensee shall within 28 days after the occurrence of any of the following events notify the Commission of—
 - (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, or
 - (ii) any change in the identity of any persons having any interest in the licensee or, in a case where the licensee is 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 per cent on aggregate in the licensee, or
 - (II) having an interest of more than 20 per cent on aggregate in the licensee, has increased or decreased that interest;

For the purposes of this subparagraph, “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.

- (s) the licensee shall comply with any request from the Commission or a member of the staff, in particular a request to—
 - (i) permit the a member of the staff 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,

- (ii) make available any test equipment or BWA apparatus necessary to facilitate the testing by a member of the staff of the test equipment or BWA apparatus,
- (iii) make arrangements—
 - (I) to allow a member of the staff to carry out an audit,
 - (II) for the carrying out of an independent audit,
 - (III) to carry out an audit, or
 - (IV) to arrange for an independent audit,
 - of any aspect of the licensee's business relating to the operation of BWA apparatus in order to ensure compliance with these Regulations or the licence. The licensee shall allow a member of the staff, or any independent auditor, such access to any premises, equipment or any part of the BWA apparatus, or to inspect, take copies of and acquire such information, as may reasonably be required for the purposes of carrying out the audit, or
- (iv) bear any costs associated with an independent audit conducted by or on behalf of the Commission;
- (t) The licensee shall comply with any direction, requirement or notice given to him, her or it by or on behalf of the Commission in respect of any matter which direction, requirement or notice is, in the opinion of the Commission, appropriate having regard to the functions of the Commission;
- (u) Without prejudice to the generality of subparagraph (t), the licensee shall comply with any direction, requirement or notice given to him, her or it 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 apparatus to which the licence relates;
- (v) The licensee agrees that 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;
- (w) The licensee agrees that the Commission may, in a proportionate manner, amend a licence where it is objectively justifiable;
- (x) The licensee shall notify the Commission in writing of the licensee's intention to locate any BWA apparatus within a zone identified in the map published in Document 10/55, as published by the Commission. Such notification shall be delivered to the Commission not less than 10 working days before putting the apparatus into service. The licensee shall pay the cost of any measures that the Commission

deems to be necessary to prevent the BWA apparatus concerned from causing harmful interference within the zones identified; and

- (y) The licensee shall comply with any technical conditions set out in the text of the licence.

Revocation and suspension of licence

12. (1) The Commission may, after serving notice on the licensee specifying reasons for the proposed suspension or revocation of his, her or its licence and after affording the licensee a reasonable opportunity to make representations and after having considered any such representations, suspend or revoke a licence in any of the following circumstances—

- (a) where the licensee fails or refuses to comply with any term or condition of the licence;
- (b) where the licensee fails or refuses to comply with a direction of the Commission or hinders or obstructs an member of the staff in the performance of his or her functions;
- (c) where the licensee contravenes any provision of these Regulations;
- (d) where the application made by the licensee for the grant or renewal of his, her or its 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 a case where the licensee is an individual, where that licensee has been adjudicated bankrupt;
- (g) in a case where the licensee is a company, within the meaning of the Companies Acts, where an order for its winding up has been made or a resolution for a voluntary winding up has been made, or a resolution for a voluntary winding up (within the meaning of that Act) 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, if the licensee is not incorporated in the State or not registered under the Companies Acts, where it is subject to any equivalent procedure;
- (h) where the licensee notifies the Commission that he, she or it does not intend to use the apparatus to which the licence relates for a licensed purpose;
- (i) where the licensee fails to use the licensed apparatus prior to the date of renewal, and for any period of more than 60 consecutive days after that date; and

- (j) in a case where the licensee is a body corporate, where a change in respect of which the licensee is required to notify the Commission under regulation 11(1)(r) occurs and that change is such that, if the Commission were determining whether to award a licence to the licensee in the changed circumstances, the Commission would not award the licence to the licensee because of that change.

SCHEDULE 1

WIRELESS TELEGRAPHY ACTS 1926 TO 2009

**WIRELESS TELEGRAPHY (BROADBAND WIRELESS ACCESS
LOCAL AREA LICENCE) REGULATIONS 2013**

**Licence granted under section 5 of the Wireless Telegraphy Acts 1926 to 2009
to keep and have possession of Broadband Wireless Access Apparatus**

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Acts 1926 to 2009, hereby grants to _____ of _____ a licence to keep and have possession of Broadband Wireless Access apparatus as specified in Part I of this licence.

The Licensee shall comply with the terms and conditions and restrictions as prescribed by the Wireless Telegraphy (Broadband Wireless Access Local Area Licence) Regulations, 2013 (S.I. No. 214 of 2013), and subject to which the Licence is deemed to be granted.

The Licensee shall comply with the conditions set out in Part II of the Licence.

The Licence shall come into effect on DD/MM/YY and, subject to revocation, suspension or withdrawal, expires on DD/MM/YY.

Signed: _____

For and on behalf of the Commission of Communications Regulation

Date of Issue: _____

Official Stamp

PART I

Statement of licensed apparatus

PART II

Technical Licence conditions

SCHEDULE 2

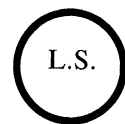
Licence fees to be paid on grant of and on each renewal of a licence under these Regulations are as set out in the following table:

Description of Matter	Fee per annum of licence duration
Grant of licence for apparatus requiring bandwidth of up to and including 7 MHz.	€1,550
Grant of licence for apparatus requiring bandwidth of over 7 MHz and up to and including 14 MHz.	€2,100
Grant of licence for apparatus requiring bandwidth of over 14 MHz and up to and including 28 MHz.	€3,000

Where a licence is granted for a portion of a year the licence fee 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.

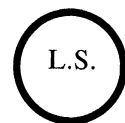


GIVEN under the Official Seal of the Commission for Communications Regulation this, 20 June 2013.

KEVIN O'BRIEN,
Commissioner.

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, 6 June 2013.

PAT RABBITTE TD,
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 certain matters in relation to licences for Broadband Wireless Access apparatus granted under section 5 of the Wireless Telegraphy Acts 1926 to 2009. Under these regulations ComReg may assign Broadband Wireless Access Local Area (BWALA) licences so that holders may offer fixed, nomadic and mobile broadband wireless access services in line with EC Decision 2008/411/EC. The BWALA licensing scheme, in parallel with Fixed Wireless Access Local Area (FWALA) scheme which permits only fixed and nomadic wireless access services, will form the framework for 3.6 GHz licensing until both of these schemes come to an end on 31st of July 2017.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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