



STATUTORY INSTRUMENTS.

**S.I. No. 34 of 2014**



WIRELESS TELEGRAPHY (TRANSFER OF SPECTRUM RIGHTS OF  
USE) REGULATIONS 2014

## WIRELESS TELEGRAPHY (TRANSFER OF SPECTRUM RIGHTS OF USE) REGULATIONS 2014

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) (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) and for the purposes of giving effect to Regulation 19 of the European Communities (Electronic Communications Network and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) and Regulation 9(11) of the European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) 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 (Transfer of Spectrum Rights of Use) Regulations 2014.

*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);

“assessment commencement date” means the date on which the Commission commences its assessment of a proposed transfer which in any event shall be on the working day following receipt of a valid notification in accordance with Regulation 4;

“Authorisation Regulations” means European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

“Commission” means Commission for Communications Regulation;

“condition” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being subject to a statement in writing by the Commission such as is mentioned in Regulation 5(5);

“electronic communications network”, “electronic communications service” and “associated facilities” have the meanings assigned to them in the Framework Regulations;

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 4th February, 2014.*

“Framework Regulations” means European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

“licence” means a licence granted in accordance with section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use apparatus for wireless telegraphy in any specified place in the State or in any specified ship or other vessel or aircraft;

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

“notification” means a notification of a proposed transfer made to the Commission under Regulation 4(1);

“notification fee” means the administrative fee payable by the notifying parties pursuant to Regulation 4(2);

“notifying party” means the transferor and/or the transferee as the context so requires;

“right of use” means the right of a licensee to use certain radio frequencies within the spectrum bands set out in the Schedule and which frequencies are specified in a licence subject to such conditions and restrictions as prescribed by the licence itself or by any Regulations governing the licence made by the Commission under section 6 of the Act of 1926;

“Schedule” means the schedule to these Regulations;

“transfer” means the assignment by a licensee (“the transferor”) of some or all of a right of use granted under a licence to another party (“the transferee”).

(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 or Schedule to these Regulations, unless it is indicated that a reference to some other enactment is intended; and
- (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.

(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 Framework Regulations or the Authorisation Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations.

*Transfer of a spectrum right of use*

3. (1) These Regulations apply to any proposed transfer of rights of use in the spectrum bands set out in the Schedule.

(2) The regulations under which licences are granted to use rights of use in the spectrum bands set out in the Schedule are hereby amended solely for the purpose of permitting the transfer of those rights of use in accordance with these Regulations.

(3) For the purposes of these Regulations a transfer occurs when a transferee lawfully acquires one or more rights of use from a transferor and the transferor divests itself of all such rights of use. The transferor and the transferee must be undertakings.

(4) A transfer notified under Regulation 4(1) must be submitted by the notifying parties in accordance with procedures specified by the Commission and shall be assessed by the Commission in accordance with guidelines published by the Commission, which may be varied by the Commission from time to time.

(5) A transferred right of use shall remain in effect for the remainder of the term of the transferor's licence in which the transferred right of use was originally vested and shall expire in full on the same date as the transferor's licence was due to expire and shall not be renewed or extended beyond that date.

(6) Save as otherwise provided in these Regulations, no part of these Regulations shall operate so as to amend an existing licence condition or to enable or permit a licensee to avoid compliance with any licence condition save where the Commission gives its prior consent in writing to any such amendment or condition not being complied with.

(7) These Regulations shall not apply to any transfer that forms part of a merger or acquisition which is required to be notified to the Competition Authority in accordance with Part 3 of the Competition Acts 2002 to 2012 or to the European Commission in accordance with Council Regulation (EC) No 139/2004. The Commission must be informed of any such merger or acquisition at the same time it is notified to the Competition Authority or the European Commission, as appropriate.

*Notification of Proposed Transfer*

4. (1) Where a proposed transfer to which these Regulations apply is intended or will occur if a public bid that is made is accepted, the transferor and the transferee shall notify the Commission in writing of the proposed transfer.

The notification shall be provided in such format and contain such information and documentation as the Commission may specify.

(2) A notification under paragraph (1) shall be accompanied by an administrative fee of €5,000.

(3) A notification under paragraph (1) shall be invalid if any of the information or documentation required by the Commission or the notification fee is not provided to the Commission in full or if any statement made is found to be false or misleading in a material respect. Any determination made by the Commission on foot of such a notification is void.

*Examination by the Commission of notification*

5. (1) Within 7 working days of the receipt of a notification in accordance with Regulation 4, the Commission shall cause a notice to be published on its website setting out details in respect of the notification and inviting interested parties to make submissions in writing to the Commission no later than 10 working days after the date of publication of such notice, or such shorter or longer period as the Commission may specify. The Commission shall consider all submissions received in writing within the period specified pursuant to this paragraph.

(2) The notifying parties shall, if so requested by the Commission by notice in writing, furnish within a time period specified by the Commission, such additional information as the Commission may reasonably require at any stage of an assessment of a notification. The Commission may extend the time period specified pursuant to this paragraph at the request of the notifying parties.

(3) Save where the Commission states otherwise in writing, where the Commission requires further information to be furnished to it pursuant to paragraph (2) during either the initial stage of its assessment and/or during the full investigation, the time periods indicated in Regulations 6(1) and 7(1) of these Regulations shall be suspended until such information has been provided to the satisfaction of the Commission.

(4) In the course of its assessment of a notification, the Commission may enter into discussions with the notifying parties with a view to identifying measures which would ameliorate any effects of the notified transfer on competition.

(5) In the course of any discussions entered into pursuant to paragraph (4), any of the notifying parties may submit proposals to the Commission of the kind mentioned in paragraph (6) with a view to the proposals becoming binding on it or them if the Commission takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under Regulation 6 or 7.

(6) The proposals referred to in paragraph (5) are proposals with regard to the manner in which the transfer may be put into effect or to the adoption of any other measure referred to in paragraph (4).

(7) Where a transfer notified in accordance with Regulation 4, a measure identified under paragraph (4) or a proposal made under paragraph (5) would involve amending a condition of an existing licence, the Commission shall review any such amendment of a licence condition having regard to its statutory functions, objectives and duties and the relevant facts including the circumstances under which the licence was first granted and is held at that time. Such review may include public consultation.

(8) Where a review under paragraph (7) is required, the time periods indicated in Regulations 6(1) and 7(1) of these Regulations may be suspended by the Commission until such time as the Commission has concluded its review pursuant to paragraph (7) and made a determination in respect of the proposed amendment to the relevant licence condition.

*Determination of issues concerned without full investigation*

6. (1) In respect of a notification received in accordance with Regulation 4, the Commission shall, subject to Regulation 5, within 35 working days of the assessment commencement date, inform the notifying parties of one of the following determinations:

- (a) that the transfer may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer would not be to distort competition;
- (b) that the transfer may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer will not be to distort competition if the conditions so specified are complied with; or
- (c) that it intends to carry out a full investigation under Regulation 7 in relation to the proposed transfer (referred to as a “full investigation”).

(2) Where the Commission makes a determination under subparagraph (a) or (b) of paragraph (1), it shall publish on its website that determination with due regard for confidentiality, within 2 months after the making of the determination.

*Determination of issues following a full investigation*

7. (1) Within 5 working days of informing the parties of its determination to carry out a full investigation pursuant to subparagraph (c) of paragraph (1) of Regulation 6, the Commission shall form an opinion of the time period necessary to carry out a full investigation (referred to as a “provisional time period”), which shall not, in so far as practicable, and subject to Regulation 5, exceed 105 working days from the forming of that opinion. The Commission shall inform the notifying parties of the provisional time period in writing. Where the Commission does not make a determination under paragraph (2) within the provisional time period, the full investigation may continue according to revised timelines and the Commission may determine further provisional time period(s) and will inform the notifying parties accordingly.

(2) On completion of a full investigation, the Commission shall make whichever of the following determinations it considers appropriate, namely that the transfer:

- (a) may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer will not be to distort competition;
- (b) may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer will not be to distort competition if the conditions so specified are complied with; or
- (c) may not be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer will be to distort competition.

(3) Before making a determination under paragraph (2), the Commission shall have regard to any relevant international obligations of the State.

(4) Where the Commission makes a determination under paragraph (2), it shall furnish the notifying parties a copy of the written determination within the time period specified by the Commission under paragraph (1) and will publish on its website the determination with due regard for commercial confidentiality, within 2 months after the making of the determination.

*Limitation on transfer being put into effect*

8. (1) A transfer that has been notified to the Commission in accordance with Regulation 4 shall subject to paragraph (3), not be put into effect until:

- (a) the Commission, in pursuance of Regulation 5, has determined under Regulation 6(1)(a) or (b) or Regulation 7(2)(a) or (b) that the transfer may be put into effect; or
- (b) subject to Regulation 5, a period of 35 working days after the assessment commencement date has elapsed without the Commission having informed the notifying parties of the determination (if any) it has made under Regulation 6;

whichever first occurs.

(2) Any transfer which purports to be put into effect where the putting into effect contravenes paragraph (1), is void.

(3) Any transfer which purports to be put into effect following the occurrence of one of the events listed in paragraph (1) must be put into effect within 12 months of the day immediately following the date on which that event occurs, or it shall be void.

(4) A transfer which purports to be put into effect, where that putting into effect would contravene Regulation 4 shall be void.

(5) The Commission may refuse to consider a notification where the proposed transfer is dependent upon the proposed transferee becoming an authorised undertaking under the Authorisation Regulations, and the transferee has not already done so.

(6) In the event that the Commission consents to a proposed transfer notified to it pursuant to Regulation 4(1), the Commission shall grant or amend all relevant licences.

(7) Compliance by the notifying parties with a determination made by the Commission under Regulation 6(1)(a) or (b) or Regulation 7(2)(a) or (b), including any conditions forming the basis or part of the basis of such determination in accordance with Regulation 5(5), shall be made a condition of any licence under which the rights of use to the transferred spectrum are made available by the Commission.



## SCHEDULE

Spectrum Bands to which these Regulations apply

790-862 MHz
880-915 MHz
925-960 MHz
1710-1785 MHz
1805-1880 MHz
1900-1980 MHz
2010-2025 MHz
2110-2170 MHz
2.50-2.69 GHz
3.40-3.80 GHz



GIVEN under the Official Seal of the Commission for Communications Regulation this,  
29 January 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,  
24 January 2014.

PAT RABBITTE,  
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 transfer of spectrum rights of use between undertakings in accordance with published procedures adopted by the Commission and not otherwise.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

---

€3.05

