

A Guide to the Radiocommunications Amendment Act 2000

Introduction

The Radiocommunications Act 1989 (the “Act”) provides the legislative basis for the traditional method of managing the radio frequency spectrum (administrative licensing), and establishes a framework for the operation of a scheme of tradable access rights. The current system of spectrum management and licensing provides for the granting of administrative *Radio Licences* (previously apparatus licences), and for the allocation of spectrum rights by auction, with the subsequent creation of *Management Rights* and *Spectrum Licences*.

The changes introduced by the Radiocommunications Amendment Act 2000 make provision for increased flexibility to deal with new and changing technologies, and promote a more pragmatic basis for resolution of radio interference. The changes do not affect the basic structure or overall policy thrust of the Act.

With the exception of the resolution of interference disputes, none of the proposed changes affect existing managers or rightholders, or the current basis on which the Government allocates spectrum.

The main amendments to the Act are -

- a) provision to create a succeeding management right and allocate it prior to the expiry of an existing right, in order to facilitate the transfer at the expiry of the existing right (s10, s11):
- b) adoption of a procedure, based on compulsory arbitration, for resolving disputes arising from harmful interference caused by licensed transmissions (s106 – s109C):
- c) transfer of the present provisions relating to privacy of radiocommunications from regulations to the Act, and the making of these subject to an offence provision (s133A):
- d) updated and more flexible regulation-making powers (s116, s134):
- e) adoption of technical changes, including –
 - (i) *revised duties of approved radio engineers, including emphasis on consideration of radio licences when assessing the potential for interference (s25);*
 - (ii) *provision, at the time a spectrum licence is granted, for the manager and licensee to determine whether either of them, acting alone or together, would have authority to amend, transfer or cancel the licence at some future time (s56 – s56D); and*
 - (iii) *extension of the public register to cover radio licences as well as spectrum licences (s5, s6).*

- f) changes to the provisions dealing with administrative licensing, including the move to licensing the use of frequencies as opposed to apparatus (s110, s111):
- g) provision for infringement offences and notices (s128A, s128B).

There are a considerable number of amendments to the detail of the Act which are consequential to the main amendments of the Act.

Specific points

Management rights

The amendments permit the creation of a succeeding management right and its allocation prior to the expiry of an existing management right. If a succeeding right is not created, the spectrum will revert to administrative licensing until a new management right is created.

These provisions mean that the issue of expiry of rights will be able to be dealt with well in advance of the expiry date, thus reducing business uncertainty which in turn will create incentives for long-term investment.

This does not, however, imply any assumptions about the method or timing of any reallocation of any existing rights, which will be dealt with on a case-by-case basis as the situation arises.

Interference resolution

The amendments provide for dispute resolution to be less confrontational and subject to a wider range of considerations than has previously been the case. The Act has not provided any remedial framework for dispute resolution other than court injunctions based solely on the "first-in-time" consideration. This may be inequitable, and may also increase transaction costs and penalise small businesses and the less affluent spectrum user.

The amendments provide for application of the Arbitration Act 1996 to the settlement of interference disputes arising from harmful interference between transmissions licensed under both radio licences and spectrum licences. This includes provision for the arbitrator to take into account international standards, including well established and widely recognised reports and recommendations dealing with the compatibility of radio transmitters and receivers.

Spectrum licence format

Radiocommunication technologies and services are developing at a rapid pace and the relatively narrow format for spectrum licences, as prescribed in the Act, is no longer appropriate. Furthermore, it is difficult to predict future trends and owners of spectrum rights need to be able to respond quickly to market and technology developments in terms of licensing new services.

Therefore the amended Act now specifies only the key technical requirements for spectrum licences, with the detailed requirements specified by way of subordinate regulations.

Modification, transfer or cancellation of a spectrum licence

The flexibility is further enhanced by providing a range of options for a licensee and a manager to act together or separately in carrying out the modification, transfer or cancellation of a spectrum licence.

General user licences

General user radio licences, such as have been granted for the Citizens Band service, did not have an equivalent under the management rights regime, which is a distinct impediment to the facilitation of certain new services and technologies. The amendments provide for the creation of general user spectrum licences when needed.

Certification and registration

The public register of spectrum access rights fulfils a dual purpose. Not only does it record ownership of those rights, but also provides the basis for technical certification of new spectrum licences in terms of their compatibility with existing licensed services. These provisions are intended to minimise the potential for harmful interference to all licensed radiocommunications - not just those operating under spectrum licences. The amendments extend the public register to include radio licences granted under the administrative licensing regime.

To maintain the integrity of the public register for certification purposes it is important that new licences be registered as soon as possible if they are to have the protection to which they are entitled. As a further incentive, the amendments require the certificate from an approved radio engineer that accompanies a spectrum licence for registration to be dated not more than three months before receipt of the certificate by the Registrar. Therefore any spectrum licences still unregistered after three months will require re-certification before they can be accepted for registration. This means that the longer a spectrum licence remains unregistered and without current certification, the greater the potential for it to be rendered valueless because of the registration of other spectrum licences in the meantime.

Directory of amendments

The Annex contains a directory of the major amendments to the Act. It does not list minor editorial and consequential changes flowing from the main amendments.

ANNEX

RADIOCOMMUNICATIONS AMENDMENT ACT 2000

DIRECTORY OF MAJOR AMENDMENTS

(to the Radiocommunications Act 1989)

All section references are to the principal act (the Radiocommunications Act 1989).

New section 2 - Interpretation

New definitions, including - co-channel emissions; harmful interference; infringement fee; infringement offence; interference; interfering equipment; ITU-R reports and recommendations; protection area; radio licence; radio receiver; radio transmitter; rightholder; spectrum licence; susceptible equipment.

Sections 5 and 6(3)

The capacity and range of the Register is expanded, with specific provision for recording of radio licences.

Sections 10 and 11

Provision is made for advance registration of succeeding management rights.

Repealed section 12

This relates to amended power floor provisions under sections 34A – 34C.

New section 25

Revised Registrar's duties are specified, including - unwanted emission limits exceeding adjacent frequency emission limits; validity (date) of an approved radio engineer certificate; expanded responsibilities of approved radio engineers; compatibility with protected licences in the Register.

New section 28

Expanded provisions for searching the register are specified, including requirements covering the privacy of natural persons and protected records in the Register.

New section 33

Simplified provisions covering the expiry of a management right are specified.

Section 34

Small changes and additions are made to the content of a record of management rights.

New sections 34A - 34C

New requirements relating to power floor levels and their specification are set out.

New section 34D

The (physical) ceiling for management rights is specified.

Section 35

The relationship between protection limits and power floor levels is added.

Section 42

Requirements for obtaining consent to the transfer of a management right are added.

Section 45

Expanded requirements are specified for recording conditions where management rights are split.

New section 48

This section is simplified, with three types of spectrum licence specified.

New section 49

The minimum contents of a spectrum licence are respecified, and include requirements covering transfer, cancellation and modification of spectrum licences.

Repealed sections 53, 54, 54A, 55, 56 and 57

These relate to modification of unwanted emission limits, multiple-user licences, transfers of licences and cancellation of licences.

New section 55

This section covers agreements between spectrum licensees and other persons transmitting under the licence in question.

New section 55A

The requirements for general user spectrum licences are set out.

New section 56

The requirements for transfers of spectrum licences are set out.

New sections 57, 57A, 57B, 57C and 57D

These sections set out the revised requirements for modifications and cancellations of spectrum licences relative to the respective responsibilities or duties of managers, licensees and the Registrar.

New section 99

This section redefines the rights of spectrum licensees in accordance with the new section 48.

Section 102

The requirements for transmitting unwanted emissions are respecified in relation to the new provisions for power floor levels.

Section 103

This section is amended to provide for general user spectrum licences.

New sections 106 – 109C

These sections cover in detail the new arbitration provisions relating to the settling of disputes over harmful interference.

New sections 110 and 111

These sections provide the new framework for the granting of radio licences (as opposed to radio apparatus licences).

Section 113

The offences framework relating to radio licences is updated.

Section 114

The presumptions relating to offences under section 113 are simplified.

New section 116

This section completely redefines all provisions relating to the making of regulations relating to all aspects of radio licences.

Section 128

A new provision covering fines for continuing offences is added.

New sections 128A and 128B

These new sections introduce the provision for infringement offences, and specify the framework for infringement notices.

New section 133A

This new section elevates from regulations to the Act provisions relating to interception and privacy of radiocommunications.

Section 134

Amendments to this section provide for the making of regulations relating to - prohibition or control of interfering and susceptible equipment; Register search references and disclosure limitations; arbitral tribunal considerations; persons who may intercept radiocommunications; offences and infringement offences.

Section 136

An amendment stipulates that fees remain a debt to the Crown until paid in full.

New First Schedule

A new simplified First Schedule relating to both radio licences and spectrum licences is substituted.

Transitional provisions

Sections **56 to 60** of the **Radiocommunications Amendment Act 2000** specify the transitional provisions that apply from the date that the amendments come into force (12 October 2001).
