

Security of tenure draft transition policy - update 15 October 2007

Security of tenure: transition plans

Introduction

The Chief Executive of the Ministry of Economic Development may, from time to time, seek to revoke radio licences granted in terms of Section 15 of the Radiocommunications Regulations 2001. Typical circumstances include:

- lack of use of the licence by the licensee;
- breach of the licence agreement by the licensee;
- prevention of harmful interference;
- change of use of the band in which the licence has been granted;
- conversion of the band in which the licence has been granted to a management right;
- and less commonly
- reasons of public safety, national security or international obligations.

In the majority of cases where revocation of the licence is required for public policy reasons, the licensee is offered an alternative licence and every effort is made by officials to minimise the effects of the change. There are, however, no formal conditions governing this process, other than those pertaining to the granting and revocation of licences, and consequently there is no security of tenure for licensees.

On 19 June 2007 the Cabinet Economic Development Committee, following a public consultation on this issue, agreed that:

- terms and conditions for the revocation of radio licences be established to require a five year minimum notice of revocation while allowing for immediate or short notice of revocation where:
 1. the licensee is in breach of licence conditions: for example, the requirement to pay annual fees or comply with technical conditions;
 2. the licensee is in breach of an agreement relating to use: for example, an agreement with the Ministry for Culture and Heritage or Te Puni Kōkiri;
 3. the licence is unused or is no longer required for its original purpose;
 4. revocation is required for the prevention of harmful interference; or
 5. revocation is desirable for national security reasons or to comply with an international agreement;
- a provision setting out the terms and conditions for the revocation of radio licences, including a five year notice period, be made by amendment to the Radiocommunications Regulations;
- a Government policy on transition plans for conversion of spectrum to the management rights regime, and within the radio licence regime, be developed and published to offer greater security of tenure;
- the Government policy on transition plans include the option to consider financial assistance with the costs of transition, in exceptional circumstances and on a case-by-case basis.

In the context of these directives, this document outlines a draft policy for transition plans, and invites comment from the public. Responses should be addressed by 9 November 2007 to:

Transition Plans

Radio Spectrum Policy and Planning

Ministry of Economic Development

P O Box 1437

Wellington

or by email to

[Radio Spectrum](#).

with 'Transition Plans' in the Subject line.

The proposals contained in the following pages, while concordant with the relevant Cabinet decisions, do not constitute settled Government policy at this time, and should not be relied upon as a basis for business decisions or purposes.

Proposed transition policy

1 This policy will apply to radio licences that are to be revoked for public policy reasons either

- within a five year period
- or
- should the licence revocation date be prior to the relevant date of expiry.

2 The policy will apply to radio licences granted by the Crown.

3 As a first step, the Chief Executive will notify the affected licensee in writing of,

- the intention to revoke the licence
- the reasons for revocation
- the planned date of revocation.

Replacement licences

4 In addition, the Chief Executive will notify the licensee in writing of the options for replacement of the revoked licence, that may (but do not necessarily) include, in order of preference

- where possible, the offer of a replacement licence of the same power and coverage at the same frequency (eg, where a radio licence is replaced by a spectrum licence under a newly created management right); or
- where possible, the offer of a replacement licence of different power and coverage at the same frequency; or
- where possible, the offer of a replacement licence of the same power and coverage in the same frequency band; or
- where possible, the offer of a replacement licence of different power and coverage in the same frequency band; or
- where possible, the offer of a replacement licence of the same power and coverage in an alternative frequency band; or
- where possible, the offer of a replacement licence of different power and coverage in an alternative frequency band; or
- no replacement offer (eg, where the band is to be put to a different use and no suitable frequency is available in any alternative band).

5 As a general principle, the Chief Executive will consult with the licensee to explain the circumstances of the proposed revocation and to identify the option that causes a minimum of disruption to the radio service provided by the licensee.

6 Where the Chief Executive and the licensee cannot agree on any option offered, the decision of the Chief Executive will prevail.

7 The licensee will have three calendar months within which to respond to any offer made. Should no response be received by the end of that period, the licence will be revoked on the notified date of revocation.

Fees and charges

8 No administrative charge payable under legislation will be collected by the Chief Executive for processing any replacement licence granted under this policy, although, after creation of the licence, charges payable during its subsequent term will be levied.

9 Should the licence be revoked other than on the anniversary date of its registration, and only at the discretion of the Chief Executive, a proportion of any annual licence fee paid in advance will, subject to the agreement of the Minister, be refunded to the licensee.

Financial compensation

10 The Chief Executive may recommend that financial compensation be paid should he, upon application by a licensee, be satisfied that replacement of the licence caused a significant financial hardship to the licensee.

11 Any such claim must be supported by a detailed financial analysis, undertaken by a Chartered Accountant at the expense of the applicant, showing the quantum of the losses.

12 The Chief Executive need not assess a claim until such additional evidence that he reasonably requires from the applicant has been provided to him.

Form of submission

It will be appreciated if your comments on the policy outlined above were in the following format, for ease and clarity of analysis.

Your organisation
Your contact address OR email address
Your DDI or mobile number

Your response to paragraph 1 of the policy. Do you agree? If not, please specify the nature of your concern.
Your response to paragraph 2, etc
Any general comments and suggestions

Posting and release of submissions

The Ministry may post all or parts of any written submission on its [website](#). The Ministry will consider you to have consented to posting by making a submission, unless you clearly specify otherwise in your submission.

In any case, submissions may be released if requested under the Official Information Act 1982. Please advise if you have any objection to the release of any information contained in a submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. The Ministry will take into account all such objections when responding to requests for copies and information on submissions.

Privacy

The Privacy Act 1993 establishes certain principles with respect to the collection, use, and disclosure of information about individuals by various agencies including the Ministry. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with the matters covered by this document.