

BERMUDA STATUTORY INSTRUMENT

BR 10/1988

**CLASS FOUR RADIO (TWO-WAY RADIOTELEPHONE
SERVICES) REGULATIONS 1987**

*[made under section 59 of the Telecommunications Act 1986 [title 24 item
10] and brought into operation on 1 April 1988]*

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Citation

1 These regulations may be cited as the Class Four Radio (Two-Way Radiotelephone Services) Regulations 1987.

Interpretation

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

"the Act" means the Telecommunications Act 1986 [*title 24 item 10*];

"aircraft" means an aircraft—

- (i) registered in Bermuda; or
- (ii) deemed to be registered in Bermuda; or
- (iii) permitted to fly unregistered in Bermuda, under the Air Navigation (Overseas Territories) Order 1977, or any amendment thereto, or any other Order or Act that may replace it and which has from time to time or at any time been acceded to by, or applied to Bermuda, or any regulations made under such Order by the Minister responsible for Civil Aviation;

"base station" means a station in the Service at a fixed location on land;

"cellular service" means a mobile public radio telephone service in the Service in which the mobile stations communicate with a series of base stations each connected to the public telecommunications service and serving a limited geographical area (cell);

"cellular telephone" means a mobile station intended to connect to base stations used in a cellular service;

"Class Four Service" or "Service" means a regularly interacting group of base, mobile and associated repeater stations for radiotelephony;

"International Radio Regulations" means the radio regulations annexed to the Convention;

"licensee" means a person who is the holder of a licence or permit, to possess or use or operate a station in the Service;

"mobile station" means a station in the Service intended to be used while in motion or during halts at unspecified points and includes hand carried transmitters;

"person" includes an individual, a company or association or body of persons, whether corporate or unincorporate and a Government Department or Government Board;

"private station" means any station in the Service other than a public telecommunication service station;

"radiotelephony" means a form of telecommunications set up for the transmission by radiocommunication of speech or, in some cases, other sounds;

"repeater station" means a station used for the reception and automatic retransmission of the signal of another station or stations;

"station" means a radio station;

"stock licence or permit" means a licence or permit granted by the Minister to a person to possess in the course of trade or business radio stations, radio apparatus or any radio receiving apparatus not excluded from the application of the Act by section 3 (6) (b) thereof;

"vessel" means a vessel registered in Bermuda either under the Merchant Shipping Act 1984 [*sic*], Part I or under the Marine Board Act 1962 [*title 22 item 3*], and any unregistered vessel owned by a person resident in Bermuda and habitually used in Bermudian waters.

(2) In these Regulations or in any licence or permit, where definitions or symbols are used, they shall bear the same meanings as in the International Radio Regulations unless otherwise provided in the Act or these Regulations.

[Regulation 2 "cellular telephone" inserted by BR 5/2001 effective 1 April 2001]

Purpose

3 These Regulations state the conditions under which stations in the Class Four Service may be possessed and used.

Requirement for licence or permit

4 Without derogating from the generality of section 9 of the Act a licence, or permit, as the case may be, is required for the possession and

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use or operation of each station in the Service and may be granted by the Minister under the Act.

Secrecy of communications

5 If any message which the station operator or licensee of a station in the Service is not entitled to receive is, nevertheless, received, he shall not make known or allow to be made known its contents, its origin or destination, its existence or the fact of its receipt to any person (other than a duly authorized officer of the Government or a competent legal tribunal) and shall not reproduce in writing, copy or make any use of such message or allow the same to be reproduced in writing, recorded, copied or made use of.

Inspection

6 (1) Any station in the Service and its licence or permit or any other record required by these Regulations to be kept, shall be open to inspection, at any reasonable time, by the Telecommunications Inspector or by any officer appointed in writing by the Minister in that behalf.

(2) The licensee shall bear the cost of any such inspection made of a station in the Service on board an aircraft outside Bermuda or a vessel when it is not in Bermudian waters.

(3) A police officer may at any reasonable time ask the licensee, or operator of a station in the Service to produce the licensee or permit for the station. If such licensee, or operator should fail to produce such instrument within a reasonable time, or if when produced such instrument should be invalid or defective, or if the police officer should have reasonable grounds for believing that it is invalid or defective or that the operator has not been authorized by the licensee to possess and operate the station he may impound the station and the licence or permit and submit them to the Telecommunications Inspector for inspection.

Application for licence or permit

7 A person wishing to possess, use, or operate a station shall make application for the grant of a licence or permit in writing to the Minister in such form and containing such information as the Minister may require.

Duration of licence or permit

8 (1) Subject to paragraph (2) a licence or permit, as the case may be, to possess or use or operate a station in the Service may be

granted in accordance with the Act to a person, or to an individual resident in Bermuda who is of or over the age of sixteen years provided that the following conditions have been observed—

- (a) if a licence or permits is for a station in a public telecommunication service, a valid public service licence shall exist for such service;
- (b) each station in the Service shall bear an identification code (hereinafter called "the identification code") to be supplied by the Telecommunications Inspector, of numbers or letters, or both, inscribed, marked or embossed on the chassis thereof or attached thereto in an easily visible place, and in such a manner that it cannot readily be removed or effaced. It shall be the responsibility of the licensee to attach, mark, emboss or inscribe such code on the station to the satisfaction of the Inspector. The identification code shall be recorded in the licence or permit;
- (c) the station for which a licence or permit is requested shall be approved in accordance with regulation 22 or 23;
- (d) the station shall be capable of transmitting and receiving only on the frequencies mentioned in the licence or permit and on no other frequencies unless agreed by the Minister.

(2) If the Telecommunications Inspector should consider that the operation of a station for which a licence or permit is sought might cause harmful interference he may recommend to the Minister that a permit be granted to the applicant to operate the station on a temporary basis for the purpose of carrying out such tests as the Telecommunications Inspector may deem necessary with such other persons, if any, that the Inspector may deem appropriate. The Minister may withhold the grant of a licence or permit until the Inspector is satisfied that the station can be operated without risk of harmful interference.

Duration of licence or permit

9 (1) Except as provided in regulation 9A, a licence shall be for a period of not less than two years or more than three years and shall expire each year on the 31st of March or on such other date as the Minister may set.

(2) A permit may be issued to a Government Department or Government Board for a period of not less than two years or more than three years and shall expire on the 31st March or on such other date as the Minister may set.

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(3) A temporary permit may be granted for a period of not more than six months.

[Regulation 9 para (1) amended by BR 5/2001 effective 1 April 2001]

Duration of licence for cellular telephones

9A A licence issued for the possession and use of a cellular telephone shall be valid for a period of one month and shall be renewed on payment of the fee prescribed under the Government Fees Act 1965.

[Regulation 9A inserted by BR 5/2001 effective 1 April 2001]

Return of licence or permit and disposal of equipment

10 (1) When a licence or permit is revoked or suspended or is superseded by a new licence or permit or lapses and is not renewed, the Telecommunications Inspector may require that the revoked, suspended, superseded or lapsed licence or permit, as the case may be, be returned to him together with any letters authorizing additions or alterations to the terms of such licence or permit.

(2) When a licence or permit is revoked or lapses and is not renewed, the licensee shall inform the Telecommunications Inspector in writing within a reasonable time not to exceed 30 days as to the manner in which the transmitting apparatus of the station (hereinafter referred to as "the unlicensed apparatus") has been disposed of.

(3) Upon the death of a licensee, his licence or permit shall lapse and his executors, heirs or assigns shall within ninety days of his death inform the Telecommunications Inspector in writing as to the manner in which the unlicensed apparatus has been disposed of.

(4) Unlicensed apparatus shall be disposed of as follows—

- (a) by removal from Bermuda and its territorial waters; or
- (b) by disposal by sale or otherwise to a person in possession of a valid licence, permit or a stock licence or permit; or
- (c) by surrender to the Telecommunications Inspector for disposal.

Written proof of removal under paragraph (a) shall be furnished to the Minister within reasonable time by the licensee or his executors, heirs or assigns.

Loss or destruction of licence or permit

11 In the event of loss, mutilation or destruction of a licence or permit, the licensee shall immediately report the circumstances in which it was lost, mutilated or destroyed to the Telecommunications Inspector. A duplicate licence or permit may be issued.

Transfer of station or of licence or permit

12 (1) Subject to paragraph (3) a licensee shall not transfer the possession of a station for which he holds a licence or permit to possess or use to any other person, unless such person holds a valid licence, permit or stock licence or permit, as the case may be, to possess, or use such station.

(2) A licensee may not, without the prior consent in writing of the Minister, assign, transfer or otherwise dispose of his licence or permit to any other person except as provided in paragraph (3).

(3) In accordance with the Telecommunications (Class Four Two-Way Radiotelephone Services) (Exemption) Order 1987 a licensee who is also licensed under section 9(1) of the Act to establish, maintain and operate a public telecommunication service namely a public radiotelephone service (hereinafter referred to as "the operator") may in the course of business rent a station (hereinafter referred to as "the rented station") to a person who does not hold a licence or permit under section 9(3)(ii) of the Act to possess or use such station (hereinafter referred to as "the customer") and such operator may transfer possession of the rented station to the customer and install, place in operation, repair or maintain such rented station on behalf of the customer notwithstanding sections 9(7) and 30 of the Act.

(4) An operator shall—

- (a) during the rental period hold a valid licence or permit under the Act to possess and use the rented station;
- (b) ensure that the rented station bears the identification code as prescribed in regulation 8(1) (b);
- (c) at the time of transferring possession of the rented station, take all reasonable steps to satisfy himself that the customer is acquainted with the terms and conditions of the licence or permit, and show him such licence or permit;
- (d) keep a record of each rental transaction showing the identification code borne by the rented station, the licence or permit number, the duration of the rental, the name and particulars of the customer, the address at which the rented station will normally be kept or if it is to be installed in a vehicle or vessel the registration number, name and description of the vehicle or vessel, as the case may be.

(5) A customer shall—

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- (a) at the time of taking possession of a rented station satisfy himself beyond all reasonable doubt that the operator holds a valid licence or permit for it; and
- (b) verify that the rented station bears the identification code.

(6) The customer shall be entitled to possess and use the rented station for the duration of the lease as if he were the licensee or permit holder thereof and shall be subject to the duties and obligations of users and operators of radio stations imposed under these Regulations and the Act.

(7) It shall be unlawful for a customer to possess and use a rented station that does not bear the identification code.

General operating requirements

13 The licensee of a station in the Service shall ensure that—

- (a) it is operated only by the licensee or by a person duly authorized by him;
- (b) any operator thereof observes the terms, provisions and limitations of the licence or permit, the Act and these Regulations;
- (c) except in the case of stations in the cellular service, transmissions therefrom are kept to the minimum practicable transmission time and that an efficient operating procedure designed to maximize the utilization of the frequency spectrum is employed;
- (d) in the operation thereof, priority is given to all communications involving the imminent safety of life or property;
- (e) in the operation thereof reasonable precautions are taken to avoid causing harmful interference, including the monitoring of the transmitting frequency for other communications in progress and such other measures as may be necessary to minimize the potential for causing interference;
- (f) such station shall not radiate an unmodulated carrier on a continuous basis except where required for tests or where specifically authorized in the licence or permit;
- (g) radiations of the transmitter thereof shall immediately be suspended upon detection or notification of a deviation from the technical requirements of the licence or permit and until such deviation is corrected and that transmissions concerning the imminent safety of life or

property are suspended as soon as the emergency is terminated;

- (h) it is not used for any purpose or in connection with anything which is contrary to law.

Control station

14 (1) In each group of regularly interacting stations in the Service the members of which are authorized by the licence or permit to communicate with each other (hereinafter referred to as "group of stations" or "group") there shall be a control station in accordance with paragraph (2) which shall be responsible for exercising effective operational control over all the stations in the group and in particular to ensure the observance of Regulations 13 to 21 by such stations.

(2) In any group containing a repeater station the licensee thereof shall exercise operational control over that group. In respect of all other groups the Telecommunications Inspector shall designate the control station and the licensee thereof shall be reasonable for exercising operational control over the group.

(3) If the licensee or operator of a station in a group fails to comply with any of the provisions of Regulations 13 to 21 the licensee of the control station of such group may refuse or suspend service to such defaulting licensee or operator, until he has corrected the deficiency for which service was refused or suspended and shall inform the Telecommunications Inspector of such suspension giving the reasons therefor. The Inspector may investigate allegations of improper operation of a station and in such case the licensee of the control station of the group shall furnish, upon reasonable request by the Inspector, the name and address of the operator of the station alleged to be in default as well as technical information concerning the station associated with the latter. Where the allegations relate to a licensee who furnishes his own station, the responsibility of the licensee of the control station for such other station shall be discharged by furnishing the specified information; except that, in cases of aggravated or repeated violations, the Inspector may require the licensee of the control station to suspend service indefinitely to the licensee of the other station pending action by the Inspector under regulation 21.

Access to stations

15 (1) The licensee of any base or repeater station in the Service shall not permit or suffer any unauthorized person to have access to the apparatus comprised therein. Each such station shall be so installed and protected that it is not accessible to or capable of operation by individuals other than those duly authorized by and under the control of the licensee. Provisions authorizing unattended operation of such a station in certain circumstances, shall not be construed to change or

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diminish in any respect the responsibility of a licensee to maintain control over the station licensed or permitted (including all transmitter units thereof), or for the proper functioning and operation of such a station and transmitter units in accordance with the terms of the licence or permit of such station, the Act and these Regulations.

(2) A mobile station in the Service may not be installed, maintained or operated in any place which is not at all times controlled exclusively by the licensee, or an individual authorized by him unless reasonable precautions have been taken to eliminate effectively the possibility of the station being operated by an unauthorized individual during the period that such place is not under the control of the licensee, or authorized individual, as the case may be. For the purposes of this paragraph "place" shall include a vehicle or vessel.

Harmful interference

16 (1) The apparatus of the stations in the Service shall be so designed, constructed, maintained and used that their operation does not cause any avoidable harmful interference.

(2) Where the Telecommunications Inspector or an individual appointed in that behalf by the Minister has reason to believe that transmission by a station in the Service is causing harmful interference he may serve a written direction upon the licensee of the first station to cease operation immediately and the licensee shall comply.

(3) If the Minister is satisfied that transmission by any station in the Service persistently interferes with the operation of any other station or appliance in the vicinity of the first station, the Minister may, by notice published in the Gazette, prohibit transmission in the area to be defined in the notice and the licensee shall comply.

(4) Where a transmission results in harmful interference the Telecommunications Inspector may, at his discretion, require appropriate technical changes in equipment and the effective radiated power to eliminate such interference and the licensee shall comply.

Permissible communications

17 (1) Stations in the Service shall transmit only the following types of communication—

- (a) any communication related directly to the imminent safety-of-life or property;
- (b) communications directly related and necessary to those communications that are permitted by the licence or permit;
- (c) communications for testing purposes required for proper station and system maintenance: however, each licensee or permit holder shall keep such tests to a minimum

and shall employ every measure to avoid harmful interference:

Provided that the licensee of any station authorized in the Service may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication. The emergency use of the station shall however be discontinued as soon as substantially normal communication facilities are again available.

(2) No private station in the Service shall transmit programme material of any kind for use in connection with broadcasting without the consent in writing of the Telecommunication Inspector.

(3) Speech shall not be encoded in transmission unless this method is approved by the Minister in writing.

Station identification

18 (1) Subject to paragraph (2) below stations in the Service shall identify themselves in the manner prescribed in the licence or permit or authorized by the Telecommunication Inspector.

(2) Repeater stations shall identify themselves by means of the Morse code or some other identifier approved by the Minister.

Repeater station

19 A repeater station, if unmanned shall be capable of being activated only by the reception of a coded signal from another station unless the Minister may otherwise decide and it is so stated in the licence or permit.

Location of licences or permits

20 The current licence or permit and any records required by these Regulations shall be kept readily available for inspection by the Telecommunications Inspector either at the station or on the premises of the licensee, who shall also keep a copy of these Regulations.

Control of operation of each station

21 (1) A licensee shall at all times be responsible for the proper control of the operation of every station in respect of which he holds a licence or permit.

(2) Where upon investigation the Telecommunications Inspector or an individual appointed in that behalf by the Minister is satisfied that a licensee has failed to exercise power control over any station of which he is the licensee, the Telecommunications Inspector or such individual may serve upon such licensee a notice in writing which shall call the attention of such licensee to such failure and shall require

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such licensee to correct such failure within 7 days of the date of service of such notice.

(3) If after the expiration of the 7 days stipulated in paragraph (2) the default has not been corrected the Minister may give such licensee notice under section 13(4) of the Act of his intention to revoke or suspend the licence or permit.

Type approval

22 (1) A licence or permit shall be granted by the Minister only in respect of a station—

- (a) which is of a type, model or description that has already been approved by the Minister for use and operation in the Service; or
- (b) which is of a type, model or description that has been approved by an authority recognized by the Minister and is accepted by him; or
- (c) for which in the case of a base station to which regulation 23(1) applies, the Minister has issued a certificate under regulation 23 (4).

For the purposes of this paragraph "station" shall comprise the station and all associated equipment including the cabling and the antennae.

(2) Where paragraph (1) does not apply to a station or any part of it for which a licence or permit is requested, the person requesting such authorization shall make the station available to the Telecommunications Inspector, or to some other individual appointed in that behalf by the Minister for inspection and type approval for use and operation in the Service in Bermuda.

(3) Before granting a licence or permit the Minister may request the applicant to furnish such proof to the Telecommunications Inspector as will satisfy him that there exist in Bermuda adequate and sufficient station for which a licence or permit is requested and which are available to the person, requesting such licence or permit.

(4) In each group in the Service a licensee is responsible for the maintenance of any station licensed to him. A rented station in a Public telecommunication service shall be maintained by the operator or some person designated by him.

(5) If the Minister decides to withhold type approval or decides that adequate repair and maintenance facilities are not available in Bermuda he may refuse to grant a licence or permit.

Construction or alteration etc of base station

23 (1) Construction, alteration, enlargement or modification, of any base station—

- (a) for which planning permission must be obtained in accordance with the provisions of the Development and Planning Act 1974 [*title 20 item 1*] or any succeeding Act; or
- (b) which involves a substantial alteration in the characteristics of the station; or
- (c) which involves an increase in the number of transmitters, shall not be begun without a construction authorization in writing issued by the Telecommunications Inspector.

(2) An application for a construction authorization shall be made in writing to the Telecommunications Inspector and shall contain full technical information concerning the proposed construction, installation, alteration, enlargement or modification.

(3) After the works have been completed for which a construction authorization has been issued, the holder of such authorization shall inform the Telecommunications Inspector accordingly and request that such works be inspected by him. The Inspector may authorize such holder to conduct any necessary tests and transmissions for the purposes of observation and/or measurements of the frequency emissions of the proposed station.

(4) When the Telecommunications Inspector is satisfied with the result of the inspection and tests he shall recommend to the Minister that a certificate to that effect be granted by the Minister to the person concerned. When such certificate has been granted, if that person is a licensee of the certified installation he may forthwith commence to operate it, or if he does not hold a licence or permit in respect of it he may apply in writing to the Minister for the grant thereof.

Technical parameters

24 (1) The Minister may authorize in respect of each station any technical parameters which he may deem necessary and may include them in the licence or permit.

(2) For the purposes of paragraph (1) and of any licence or permit—

- (i) the effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of the antenna in the horizontal plane;

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- (ii) the mean radio frequency power (RFP) will be taken as that delivered to the antenna and generally for the unmodulated condition; but in the case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and the side bands, this will be allowed for;
- (iii) RFP, ERP, and the antenna characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Minister;
- (iv) the symbols used to determine the classes of emission shall have the meanings assigned to them in the Convention; and
- (v) "bandwidth" and "frequency tolerance" shall have the meanings assigned to them in the Convention.

Equipment for stations

25 (1) When specified by the Minister, a station shall be equipped with—

- (a) sufficient and suitable indicating instruments to confirm that the station is functioning as authorized and to enable all normal adjustments to be made without recourse to external instruments; and
- (b) an approved apparatus for the continuous visual indication of the extent of the modulation of the radio frequency carrier.

(2) All equipment and the location and arrangement thereof shall conform to specifications, if any, issued by the Minister from time to time.

(3) The licensee shall take all necessary precautions to ensure that in the construction of the transmitter and associated equipment and in the manner of installation no parts are exposed that, in the operation of the station, might constitute a danger to any person.

Changes to radio apparatus

26 (1) A licensee shall change the radio apparatus of his authorization station without the consent of the Minister only if—

- (a) the new apparatus is of a type, model or description that has been approved by the Minister or by an authority

recognized by him for use in the service performed by the authorized station;

(b) no change is made in the type of emission, radio frequency, antenna characteristics, or the power to be used, as specified in—

(i) the application pursuant to which the instrument of authorization for the station was issued; or

(ii) the instrument of authorization.

(2) Any change shall however be subject to regulation 23(1).

Maintenance

27 (1) Where upon inspection and investigation the Telecommunications Inspector or an individual appointed in that behalf by the Minister is satisfied that the station has not been properly maintained or that the maintenance facilities or the spare parts available are not adequate to assure its continued working on a reliable basis, according to good engineering practice and the provisions of these Regulations and of the International Radio Regulations, the Telecommunications Inspector or such individual may serve upon the licensee a notice in writing which shall call the attention of such licensee to the situation and shall require such licensee to remedy the state of affairs to the satisfaction of the Minister within a reasonable time, to be fixed by the Minister, not to exceed sixty days.

(2) If after the expiration of the time stipulated by the Minister the default has not been corrected the Minister may give such licensee notice under section 13(4) of the Act of his intention to revoke or suspend the licence or permit.

Antennae and buildings

28 (1) The licensee of a station in the services shall ensure that the antenna and supporting structures are designed to be adequate for the loading specified by the Minister and are painted, lit and maintained to the satisfaction of the Minister and the Minister responsible for Civil Aviation.

(2) An antenna which crosses above or is liable to fall upon or to be blown onto any overhead utility wire or apparatus shall be guarded by the licensee to the reasonable satisfaction of the owner of such utility wire or apparatus concerned.

(3) The issue of a licence or permit by the Minister shall not relieve the applicant of the necessity of obtaining planning permission for the construction of any works, buildings, antennae or other installations in accordance with the provisions of the Development and Planning Act

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1974 [*title 20 item 1*] or any other relevant legislation regarding land development and planning.

False statement in application under regulation 7

29 Any person who wilfully and knowingly makes, in a written application under regulation 7 for the issue of a licence, a statement that is false in a material particular commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,000 or both such imprisonment and fine.

Repeal

30 [*omitted*]

Commencement

31 [*omitted*]

[*Amended by:*

BR 5/2001]