

COMMUNICATIONS ACT
(Cap.68:01)

COMMUNICATIONS (RADIOCOMMUNICATIONS), REGULATIONS, 2021

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(Cap.68:01)

COMMUNICATIONS (RADIO COMMUNICATIONS) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 200 of the Communications Act, I, GOSPEL KAZAKO, Minister of Information, on the recommendation from the Malawi Communications Regulatory Authority, make the following Regulations-

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Communications (Radio Communication) Regulations, 2020.

Interpretation

2. In these Regulations, unless the context otherwise provides—

“allotment” means entry of a designated radio frequency channel in the Malawi National Frequency Allocation Plan as adopted by a World Radio Conference, for use by one or more users for a terrestrial or space radio communication service in Malawi and under specified conditions;

“aircraft station” means a station in respect of radio communications onboard an aircraft;

“amateur” means a duly authorized person interested in radio techniques solely with a personal aim and without commercial interest;

“amateur service” means a radio-communication service for the purpose of self-training, intercommunication and technical investigations carried out by an amateur;

“amateur station” means a radio station used for amateur services;

“authorised officer” means any person mandated by the Authority to act on its behalf;

“base station” means a radio communications transmitter or receiver and its associated infrastructure including any antenna, housing and other equipment in the land mobile service;

“earth station” means a station located on the earth’s surface intended for communication with one or more reflecting satellites or other objects in space;

“experimental radio service” means a service utilizing Radio waves for experiments with a view of developing science or technology;

“fixed service” means a radio communications service from a specified fixed point;

“frequency allocation” means the reservation of one or more radio bands for a particular use or uses;

“frequency assignment” means the reservation of one or more radio frequencies for use by a particular entity in accordance with the Malawi national frequency allocation plan;

“radio frequency band” means a range of radio frequencies with specified upper and lower frequency limits;

“frequency tolerance” means the maximum permissible departure from the centre frequency during emission;

“harmful interference” means interference which endangers the functioning of a radio communication service by degrading, obstructing, or repeatedly interrupting a radio communication;

“interference” means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communications system, manifested by any performance degradation, misinterpretation or loss of information which could be extracted in the absence of such unwanted energy.

“ITU” means the International Telecommunications Union which is a specialized agency of the United Nations that is responsible for issues that concern information and communication technology;

“land mobile service” means a mobile service between a base station and a land mobile station or between land mobile stations themselves;

“land mobile station” means a mobile station in the land mobile service capable of surface movement within Malawi;

“land station” means a station in the mobile service not intended to be used while in motion;

“licence” means a licence issued by the Authority authorizing the use of a radio frequency;

“Malawi National Frequency Allocation Plan” means the plan which the Authority shall develop and manage pursuant to section 82 of the Act;

“network” means two or more stations operated by a person and used or intended to be used in communications with one another;

“public network” means a radiocommunication network which is accessible to the public;

“short range device” means radiocommunication device covering short distance characterized by low power transmission;

“radiocommunication” means electronic communication by means of radio waves;

“radiocommunication device” means:

- (a) a radiocommunication transmitter;
- (b) radiocommunication receiver; or
- (c) anything designed for purposes of radiocommunication by means of reflection of radio emissions.

“radiocommunication receiver” means anything designed for purposes of radiocommunication by means of reception of radio emission;

“radiocommunication transmitter” means an emitter designed for the purpose of radiocommunication;

“radio frequency spectrum” means range of radio frequencies within the radio frequency band;

“radio station” means a transmitter, receiver, a combination of transmitters and receivers or any accessory thereto which is used for radiocommunication;

“ship station” means a mobile station in maritime mobile service located on board a vessel;

“transmitter” means any device, irrespective of its use or function or purpose of its design, that is capable of emitting radio waves;

“user” means any person who uses or operates radiocommunications service or equipment.

“Radio Access Network (RAN)” means a part of mobile telecommunications system that connects a device such as mobile phone or a computer to its core network.

“World Radio Conference” means a conference organized by ITU to review, and, if necessary, revise the ITU radio regulations, the international treaty governing the use

of radio-frequency spectrum and the geostationary-satellite and non-geostationary-satellite orbits and address any radiocommunication matter of a worldwide character.

Application of
these regulations

3. These Regulations shall apply to-
 - (a) the transmission of radio waves , communication or signal by radio or any radio emission or communication originating or received within Malawi, or intended to be used in Malawi;
 - (b) a person within Malawi, engaged in communication or transmission of radio waves;
 - (c) use of all devices and equipment whose operation is capable of emitting radio waves or transmitting radio waves by radiation, conduction or other means;
 - (d) the manufacture, importation, sale, offer for sale, shipment or use of a device, equipment or system, capable of emitting radio waves by any means; and
 - (e) any other physical, natural or artificial disturbances to radiocommunications systems.

Objectives of
the
Regulations

4. (1) The objective of these Regulations is to establish a framework for the efficient use of radio spectrum resources and avoidance of harmful interference through measures aimed at—
 - (a) providing the widest possible range of wireless services to those who desire them, while maximising the spectrum available to those who depend upon wireless technology in order to obtain maximum spectral efficiency;
 - (b) making effective, efficient and prudent use of the radio frequency spectrum in the best interest of the public;
 - (c) stimulating technological innovation and foster competition in radiocommunication;
 - (d) establishing a market-based system in the assignment of commercial licences for the use of radio frequency spectrum, and the provision of radiocommunication services;
 - (e) exempting socially desirable services from the market-based apportionment system of assigning radio frequency spectrum usage, through classifying non-commercial spectrum and commercial spectrum;

- (f) implementing policies that promote efficient radio frequency spectrum assignment and use, in order to satisfy the constantly evolving radio frequency spectrum needs and ensuring that the spectrum resource is apportioned and used efficiently;
- (g) developing a national frequency allocation plan based on the public interest or market requirements for the provision of non-commercial and commercial usage of the radio frequency spectrum;
- (h) managing the radio frequency spectrum in accordance with principles of transparency to spectrum users and general public, non-discrimination and competition regulations, to reflect the market value of the radio frequency spectrum;
- (i) ensuring that commercial and public interests for the use of radio frequency spectrum are appropriately balanced to meet the immediate and long term demands by existing and new radio communication technologies;
- (j) providing regulatory framework for-
 - (i) allocating radio frequency bands,
 - (ii) authorising and recording radio frequency use,
 - (iii) establishing recommendations and standards for governing spectrum use,
 - (iv) resolving conflicts arising from usage of radio communication; and
 - (v) general provisions for radio frequency spectrum policy at national and international level;
- (k) developing processes to allocate spectrum, assign frequencies to specific licences, monitor compliance and enforcement;
- (l) providing for radio frequency assignment procedures that ensure minimum interference between radio communication services and efficient utilisation of radio frequency spectrum;
- (m) managing the radio frequency spectrum in order to support the communication policy objectives under the Act;
- (n) creating a predictable environment for current and future use of radio frequency spectrum necessary for the development of radio services and products; and
- (o) ensuring that the framework for the co-ordination of radio frequency spectrum complies with the public interest and international obligations for the maximisation of user benefits.

PART II- GENERAL PROVISIONS

Harmonisation
with international
regulations

5. (1) except as otherwise provided for in these regulations, the Authority shall assign radio frequency spectrum in accordance with ITU Radio Regulations in force at any particular time.

(2) The nomenclature of frequency and wavelength shall be in accordance with the ITU Radio Regulations, where radio spectrum is subdivided into nine frequency bands, designated as specified in the First Schedule to these Regulations.

(3) The unit of frequency shall be the Hertz (Hz) and frequencies shall be expressed in—

(a) Kilohertz (KHz), for frequencies up to and including 3,000 Kilohertz (KHz);

(b) Megahertz (MHz), for frequencies above 3 Megahertz (MHz), up to and including 3,000 Megahertz (MHz); and

(c) Gigahertz (GHz), for frequencies above 3 Gigahertz (GHz) up to and including 3,000 Gigahertz (GHz).

Development of Malawi
National Frequency
Allocation Plan

6. (1) The Authority shall develop the Malawi National Frequency Allocation Plan to create a framework for the effective utilization of the radio frequency spectrum in relation to SADC Region and ITU Region 1 trends.

(2) The Malawi National Frequency Allocation Plan shall include—

(a) the division of the spectrum into a number of frequency bands;

(b) designation of the bands to be used primarily for the purposes of national defense and security;

(c) designation of a part of the spectrum to be used primarily for various purposes;

(d) the purpose for which a band or any part of a band, including any particular frequency or frequency channel may be used;

(e) the classification of radio communications services or radio stations;

(f) the nature of services to be rendered by each class of stations and each station within a class;

(g) the assignment of bands of frequencies to the various classes of stations;

(h) allocations and exceptions to the allocations; and

(i) any other information deemed necessary by the Authority.

(3) In developing the National Frequency Allocation Plan under subregulation (2), the Authority shall promote—

- (a) equitable distribution of radio frequency spectrum to services;
- (b) economic opportunity for a wide variety of applicants including small businesses, rural developers or investors and businesses;
- (c) investment and rapid deployment of new technologies and services.

(4) The Authority shall assign radio frequency spectrum to all radio stations and classes of radio stations in accordance with the National Frequency Allocation Plan.

(5) The Authority shall ensure that no harmful interference is caused to services allocated in the Malawi National Frequency Allocation Plan.

(6) The Authority shall, from time to time, review the National Frequency Allocation Plan as deemed necessary and any other developments in the ICT sector.

**Frequency
allocation**

7. (1) The Authority shall allocate any segment of the radio frequency spectrum on exclusive or shared basis for use by one or more radio services.

(2) Where the Authority allocates a segment of the radio spectrum, priority for primary and secondary services shall apply as follows—

(a) primary services shall have equal rights, except that, in the preparation of frequency plans, the primary services shall have prior choice of frequencies over permitted services;

(b) radio stations of a secondary service shall—

(i) not cause harmful interference to radio stations of primary or permitted services.

(ii) not claim protection from harmful interference from radio stations of a primary or permitted services; and

(iii) claim protection from harmful interference from radio stations of the same or other secondary service to which frequencies were already assigned.

(3) For the purpose of sub regulation (2)-

(a) “primary service” means a class of allocation of services in the frequency allocation plan which has a priority choice of frequencies and priority protection from interference coming from other services.

(b) “secondary service” means services that shall not cause harmful interference to stations of primary services to which frequencies are

already assigned or to which frequencies may be assigned at a later date.

Radio
frequency
licence fees

8. (1) The Authority shall publish in the Gazette a schedule describing each kind of radio frequency licence that may be issued and formula for calculating applicable fees.

(2) In setting up the fees for a radio frequency licence, the Authority shall take into account the following—

- (a) the need to ensure the efficient usage of the radio frequency spectrum;
- (b) the re-usability of the frequency;
- (c) the area of coverage involved;
- (d) the period of use of the assigned frequency;
- (e) the demand for spectrum; and
- (f) any other factors deemed relevant by the Authority.

(3) The Authority may, from time to time, revise the radio frequency spectrum fees.

Application for a
radio frequency
licence

9.(1) An applicant for a radio frequency licence shall submit the following to the Authority—

- (a) a type approval certificate for his equipment issued by the Authority;
- (b) technical information prescribed by the Authority;
- (c) an air worthiness certificate from the Department of Civil Aviation for aeronautical service radio licence application;
- (d) a licence from the Department of Marine Services for maritime service radio licence application;
- (e) a certificate of incorporation from the Registrar of Companies where applicable; and
- (f) tax clearance certificate or tax registration certificate where applicable.

(2) Where the provision of communication service entails the use of radio frequency, the Authority shall grant a radio licence to the applicant upon production, by the applicant, of a valid electronic communication licence issued under the Act.

(3) The Authority shall issue a radio licence for commercial spectrum use—

- (a) on a first-come first-serve basis subject to spectrum demand; or
- (b) where appropriate, through a competitive bidding method.

(4) The Authority shall use the competitive bidding method of assignment where—

- (a) there are mutually exclusive applications for the use of radio spectrum and the demand exceeds supply; or
- (b) the Authority has determined and identified classes of licences whose grant through competitive bidding shall—

- (i) safeguard and protect the public interest in the use of the radio frequency spectrum;

- (ii) promote the development and rapid deployment of new technologies, products and services for the benefit of the public including those residing in rural areas;

- (iii) promote competition and efficiency; and

- (iv) any other condition deemed necessary by the Authority.

(5) Where the Authority determines that a competitive bidding process be used, it shall publish a public notice which shall include the following—

- (a) the selection method;
- (b) the reserve price where applicable;
- (c) the entry fee for bidders;
- (d) the deposit payable by the successful bidder; and
- (e) any other requirement deemed necessary by the Authority

10. (1) When making radio frequency spectrum assignments, the Authority shall be guided by the National Frequency Allocation Plan and applicable ITU Radio Regulations.

(2) The Authority shall identify radio frequency transmissions in accordance with the composition and blocks of international call signs available for assignment.

(3) The call signs referred in subregulation (2) shall match classes of stations or any other clearly distinguishing form of identification readily recognizable internationally where applicable;

(4) A person shall not transmit radio signals capable of causing harmful interference to distress, alarm, urgency or safety communication on the international distress and emergency services as provided in the Malawi National Frequency Allocation Plan and the International Radio Regulations.

(5) The Authority shall ensure that supplementary distress frequencies that are available on less than a world-wide basis are given adequate protection.

11. (1) Authority shall grant a radio licence to an assignee of a radio frequency upon full payment of applicable licence fees which shall be non-refundable.

**Frequency
assignment**

**Grant of
licence**

(2) The licence granted under subregulation (1) shall, in the minimum, contain the following details-

- (a) name of the licensee;
- (b) licence number;
- (c) purpose or class for the licence;
- (d) effective and expiry dates of the licence;
- (e) operating frequency or band;
- (f) operating technical parameters;
- (g) seal of the Authority;
- (h) signature of the Director General of the Authority; and
- (i) any other condition the Authority may deem fit.

(3) The licence granted under this regulation shall permit the licensee to engage in the following activities—

- (a) installation of a radio station at any place in Malawi or on board any vehicle, aircraft or marine vessel licensed in Malawi;
 - (b) operation of a radio station at any place in Malawi or on board any vehicle, aircraft or marine vessel licensed in Malawi; or
 - (c) any other activity designated by the Authority from time to time which requires a radio frequency licence.
- (4) The Authority shall not grant a radio licence to two or more entities operating in a joint venture from the same band allocated for public wireless access network use.
- (5) The radio licence granted by the Authority shall confer the licensee the right of usage for the spectrum and not proprietary rights.
- (6) The licensee shall not request for modification of radio licence details.
- (7) A radio frequency licence shall, unless otherwise prescribed by the Authority in the licence, be valid for a period of one (1) year

12. (1) A licensee shall apply in writing for renewal of its radio frequency licence at least three (3) months before the expiry of the licence.

(2) The Authority may, before renewing a radio frequency licence, verify whether there was appropriate spectrum utilization by the licensee during the period of the licence.

(3) The Authority may refuse to renew a licence if the licensee is in breach of the Act, these Regulations or any term or condition of the licence.

13.(1) When issuing a radio frequency licence under regulation 11, the Authority shall classify them according to their usage as follows—

- (a) non-commercial spectrum uses for socially desirable services comprising of—
 - (i) public protection, disaster and relief services;
 - (ii) amateur radio services; or
 - (iii) experimental radio services.

(b) commercial spectrum uses.

Licence obligations
of the radio
frequency licensees

14.(1) A licensee shall ensure efficient utilization of frequencies throughout their service area.

(2) A licensee shall not lease or transfer to a third party the radio frequency licence granted to them under these Regulations.

(3) Where a licensee is acquired by another licensee it shall surrender the spectrum to the Authority.

Restrictions on
transmission

15. (1) Except for services in unlicensed bands, any person shall not carry out test transmission without prior approval from the Authority.

(2) Where the Authority approves the test transmission, it shall stipulate the conditions under which such tests shall be carried out.

(3) Where the Authority grants an experimental licence under subregulation (1), it shall restrict such a licence to-

(a) educational or training institutions; or

(b) qualified persons,

as the Authority may determine, for the purpose of conducting research and development activities, experiments or demonstrations in radio communication.

Safe operation
of station or
network

16. (1) A licensee shall comply with Regulations and the provisions of International Telecommunications Conventions that have been ratified by the Republic of Malawi.

(2) A licensee shall ensure that a radio station is operated in accordance with the radio licence parameters stipulated in the licence.

(3) Notwithstanding subregulation (1), a licensee shall ensure that a radio station is operated in a manner which is safe including—

(a) not interfering with any other station or network or telecommunication system or service licensed by the Authority; and

(b) complying with any other relevant Regulations or Rules including Communications (Type Approval) Regulations and (Electromagnetic Field) Rules.

Investigation
and Inspection

17. (1) The Authority may at any instance inspect any transmission or emission with respect to—

(a) compliance with the Act and Regulations and Rules made under the Act;

(b) compliance with licence terms and conditions;

(c) resolution of harmful interference; and

(d) any other reason deemed necessary by the Authority.

(2) Where the Authority is exercising its powers under subregulation (1), any person in use of electrical, electronic or radiocommunication equipment which causes or is suspected to have caused interference or disturbance to electronic communications equipment, stations, networks or systems shall permit an authorized officer to inspect the equipment.

- (3) During any inspection the Authority may—
- (a) issue compliance or cease and desist order against any radio station licensee causing or likely to cause harmful interference;
 - (b) order any licensee to switch off its radio station in order to investigate interference; or
 - (c) take any regulatory sanction necessary against any radio station found to be causing harmful inference.

(4) Where the Authority determines that interference or disturbance is caused in subregulation (2) it shall by notice in writing, direct the person to do, at his own expense, any one or more of the following—

- (a) take suitable measures to eliminate or reduce the interference disturbance;
- (b) remedy a fault or the improper operation of the equipment;
- (c) modify or alter the equipment installation; or
- (d) disconnect the equipment.

(5) Subject to section 86 of the Act, in the exercise of the powers under this regulation, the Authority may enter and search premises where the Authority reasonably suspects that an entity or a person has acted or is about to act in violation of these Regulations.

PART IV-GENERAL TERMS AND CONDITIONS OF A RADIO FREQUENCY LICENCE

Unused spectrum	20. The Authority shall not renew a radio frequency licence where the licensee does not put the assigned frequency spectrum to use within twelve (12) months from the date of assignment or within such period as the Authority may prescribe.
Radio frequency	21. (1) The Authority may re-allocate or re-assign any frequencies in line with international radiocommunications regulations and applicable national regulations.
Restrictions on spectrum usage	22. (1) A licensee shall not use any frequencies other than those assigned by the Authority. (2) A licensee shall not use any frequencies for any other purpose other than the purpose prescribed by the Authority in the licence.
Unlicensed spectrum bands	

23. (1) The Authority shall designate frequency bands where a person may deploy services without a radio licence.
- (2) Notwithstanding subregulation (1), a person shall deploy services in the designated bands subject to obtaining authorisation and type approval of devices to be used from the Authority.
- (3) The frequency bands designated under subregulation (1) may be used for deployment of experimental radio services including—
- a. experimentations in scientific or technical radio research;
 - b. experimentations under contractual agreement with the Government or for export purposes;
 - c. communications essential to research projects;
- (b) technical demonstrations of equipment or techniques;
- (c) field strength surveys by persons who are not eligible for authorisation in any other bands;
- (d) demonstration of equipment to prospective purchasers by persons or institutions engaged in the business of selling radio equipment;
- (e) testing of equipment in connection with production or regulatory approval of the equipment;
- (h) development of radio techniques, equipment or engineering data, not related to an existing or proposed service, including field or factory testing or calibration of equipment; and
- (i) any other service as determined by the Authority.
- (4) An authorisation for experimental radio services issued by the Authority under this regulation shall not exceed one year.
- (5) The Authority may require a person issued with an authorisation under this regulation to submit progress report on the experiments being conducted.
- (6) A person authorised to use this band under this regulation shall surrender the authorisation to the Authority upon permanently ceasing his operations.
- (7) The Authority may at anytime cancel or modify an authorisation obtained under sub regulation (2) on the following grounds—
- (a) failure to comply with any condition of his authorisation;
 - (b) failure to comply with the Act or these Regulations; and
 - (c) any other ground deemed relevant to the Authority.
- (8) Before exercising its powers under subregulation (7), the Authority shall give the authorized person an opportunity to be heard.
- (9) Where a licensee has been granted an authorization under this regulation, he shall not use the frequencies on an exclusive basis.

(10) The Authority may inspect an experimental radio service station at any time.

Temporary radio operations

24. (1) The Authority may issue a temporary radio frequency licence which shall be valid for a period not exceeding six (6) months.

(2) Notwithstanding subregulation (1) the Authority may, upon application by the licensee, extend the validity period of a temporary radio frequency licence.

(3) Where a licensee intends to have an extension of temporary radio frequency licence, he shall file the application at least fifteen (15) days before the expiration of the temporary licence.

(4) In applying for a temporary radio frequency licence the applicant shall comply with the requirements prescribed under regulation 9 (1).

Spectrum audit and re-farming

25. (1) The Authority shall from time to time conduct radio frequency spectrum audit to determine efficient and effective utilization of radio frequency spectrum resources.

(2) The Authority may carry out re-farming with a view to reassign the radio frequency spectrum in order to accommodate changes in technologies and services in the use of the radio frequency spectrum.

(3) Where necessary the Authority may reassign a radio frequency to a station within the same band or to a different band.

Short range devices

26.(1) Subject to regulation 24, a person shall not operate a short range device without observing a maximum permissible power limits as specified in the Second Schedule.

(2) Radio frequency allocated to any short range device may be shared by other users.

Compliance with type approval requirement

27. A person shall not operate a radio station without first complying with the Communications (Type Approval) Regulations.

Compliance and penalties

28. (1) Any person who contravenes a provision of these Regulations commits an offence and shall upon conviction be liable to a fine of K5,000,000.00 and imprisonment for five (5) years.

(2) Any person who fails or neglects to comply with directions issued by the Authority under these Regulations commits an offence and shall, upon

conviction, be liable to a fine K5,000,000.00 and imprisonment for five (5) years.

- (3) Notwithstanding any criminal sanctions under these Regulations, the Authority may, if it is satisfied that a licensee has breached any provision of these Regulations, or a term or condition of its licence, make any appropriate order or impose a sanction on the licensee, and shall inform the licensee in writing of its decision.
- (4) An order made or sanction imposed under subsection (1) shall include the following-
 - (a) requiring the licensee to remedy the breach;
 - (b) ordering the licensee to pay compensation;
 - (c) ordering the licensee to account for the profits made out of the breach;
 - (d) ordering the licensee to pay a fine;
 - (e) suspending the licensee's licence;
 - (f) revoking the licensee's licence; or
 - (g) any other order the Authority may deem appropriate.

Made this day of , 2021

GOSPEL KAZAKO
Minister of Information

	FREQUENCY BAND	FREQUENCY RANGE	METRIC SUBDIVISION
1	Very Low Frequency (VLF)	3 to 30 kHz	Myriametric waves
2	Low Frequency (LF)	30 to 300 kHz	Kilometric waves
3	Medium Frequency (MF)	300 to 3 000 kHz	Hectometric waves
4	High Frequency (HF)	3 to 30 MHz	Decametric waves
5	Very High Frequency (VHF)	30 to 300 MHz	Metric waves
6	Ultra High Frequency (UHF)	300 to 3 000 MHz	Decimetric waves
7	Super High Frequency (SHF)	3 to 30 GHz	Centimetric waves
8	Extremely High Frequency (EHF)	30 to 300 GHz	Millimetric waves
9		300 to 3 000 GHz	Decimillimetric waves

FIRST SCHEDULE: FREQUENCY BANDS