



# Review for the Grant of Right of Use of Spectrum for Test and Trial Purposes

## Consultation Document

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## **1. Purpose of document**

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This consultation is proposing a number of changes to update the current Test and Trial licensing framework to enhance the flexibility already provided for in the said framework and hence increase its attractiveness and take-up.

The aim of this consultation is to receive feedback from stakeholders on the proposed modifications to the Test and Trial licensing framework. Interested parties are invited to submit their views to the Malta Communications Authority ('MCA' or 'Authority') and are requested to provide all relevant data in support of their submissions.

## 2. Introduction

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Malta's size, geographic location and population density offers an ideal location for industry and entities involved in technology innovation and research to act as a test-bed for new services. It is a microcosm that offers the potential for test and trial applications on a nationwide basis with limited investment.

In this regard, in August 2009, the MCA consulted on the grant of right of use of spectrum for test and trial purposes<sup>1</sup>. Subsequent to this consultation the MCA had in May 2010, published its report on the outcome of the consultation process and on the assignment procedure to be adopted in processing requests for the grant of rights of use of spectrum for test and trial purposes (MCA/10/27)<sup>2</sup>. A set of guidelines were also published (document reference MCA/10/30)<sup>3</sup> to guide interested stakeholders during the application phase of the licensing process.

Through this framework the MCA operates a test and trial licensing scheme in support of innovative spectrum uses which aims to exploit Malta's unique potential as a test-bed. There are two types of licences available: one that covers technology tests, and the other that covers service trials involving third parties or the public. Test and trial licences give stakeholders the opportunity to test and/or trial a given technology or service on a short-term basis and with a proportionate licence fee that reflects and encourages this initiative. Such licences contain the appropriate conditions supporting the research and technological innovation element of wireless services whilst at the same time ensuring the efficient use of radio spectrum.

In this context reference should be made to the 5G Action Plan for Europe published by the European Commission on 14 September 2016<sup>4</sup>, which establishes a clear roadmap for public and private investment on 5G infrastructure in the European Union. A main objective of this plan is to promote the carriage of preliminary trials, under the 5G-PPP<sup>5</sup> arrangement, to take place from 2017 onwards, and pre-commercial trials from 2018. These trials will precede the launch of fully commercial 5G services in Europe by the end of 2020.

Hence, the MCA wants to ensure that its test and trial licensing regime provides full flexibility in the event that interest is received for the carriage of any 5G related activities in Malta prior to commercial operation. The MCA will therefore continue to operate and seek opportunities to promote the take-up of its test and trial licensing scheme in order to exploit Malta's unique potential as a test-bed for

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<sup>1</sup> <http://www.mca.org.mt/sites/default/files/attachments/consultations/2012/test-and-trial-licence-consultation-paper.pdf>.

<sup>2</sup> <http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/assignment-procedure-test-and-trial-licences-decision-may-2010.pdf>.

<sup>3</sup> <http://www.mca.org.mt/sites/default/files/pageattachments/Test%20and%20Trial%20Guidelines.pdf>.

<sup>4</sup> [http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=17131](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17131).

<sup>5</sup> The 5G Public-Private Partnership (5G-PPP) is an initiative of the European Commission with the aim of making sure that 5G technology is available in Europe by 2020.

wireless systems, such as 5G and its various business models which include transport and especially the automotive sector, health, energy, smart factories, media and entertainment.

In this regard the MCA has reviewed its test and trial licensing scheme in order to validate the applicability of the current licence terms and conditions and at the same time consider widening its scope of such licences in order to facilitate the undertaking of additional tests and trials for wireless services in Malta.

Subsequent to the feedback received, the Authority will publish its Decision which will contain the consolidated version of the test and trial licensing regime factoring the changes to the current regime.

### 3. Analysis of the Test & Trial Licensing Framework

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#### 3.1 Legal Framework and applicability of Test & Trial licensing regime

Test and trial licences are granted by the MCA under the Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta)<sup>6</sup>. This Act establishes the framework for the grant of rights of use of radio frequencies and for the installation or use of radiocommunications apparatus. Each licence therefore authorises the use of specific apparatus, which is listed as part of the licence, for transmissions on specific frequencies, to and from specific points, as the case may be. The licence fees for the grant of such licences are established under the 8<sup>th</sup> Schedule (Part B) of the Electronic Communications Networks and Services (General) Regulations (S.L.399.28 of the Laws of Malta)<sup>7</sup>.

The current framework establishes that a test licence can only be requested for the purpose of carrying out tests on innovative<sup>8</sup> radio equipment and uses of spectrum or technologies under test conditions. It is therefore considered that test licences are intended for localised testing only, where communication signals need to be confined to a specific site. A test licence cannot involve members of the public or provide a service to third parties.

The trial licence can only be requested for the purpose of carrying out trials of innovative radio services involving members of the public or other third parties. This licence type is intended to give stakeholders the opportunity to become more acquainted with the technology, its benefits and associated pitfalls, and be in a better position to evaluate its feasibility.

Test and trial licences granted by the MCA contain the standard licence conditions aimed to, amongst other things, ensure the efficient use of the radio frequency spectrum as well as to limit the exposure of the general public to electromagnetic fields. In addition, holders of such licences are legally bound to ensure that their networks do not cause any undue interference to other networks or services in the same or adjacent frequency bands.

Both licences require licensees to provide a report to the MCA on the results of the tests/trials carried out in Malta. Such information is treated in line with MCA's confidentiality guidelines<sup>9</sup>.

Test and Trial licences are issued for an initial maximum term of one-year and may be extended for an additional one-year term following submission of a written request to the MCA providing justifications as to why the licence needs to be extended. Both licences can be terminated at any time by the MCA if the licence holder is in breach of any of the obligations as contained in the legislation and/or decisions enforced by the MCA or in the applicable licence.

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<sup>6</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8866&l=1>.

<sup>7</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>.

<sup>8</sup> Innovative refers to the wireless service or technology that has never been deployed in Malta on the requested frequency band.

<sup>9</sup> <http://mca.org.mt/sites/default/files/attachments/faqs-and-guidelines/2012/confidentialityguidelinesfinal-0.pdf>.

### **3.2.1 Additional conditions attached to trial licences**

Trial licences are subject to the following additional conditions:

1. All trial licences shall be issued on condition that the trial will be carried out on a non-commercial, non-profit basis.
2. The services offered under a trial licence must be at no cost to participating parties and the contract with third parties willing to trial the technology must, as a minimum, contain the following clauses:
  - i. the period over which the trial shall be carried out and/or the duration of the contract with the third party;
  - ii. details of the service on trial together with the risks and limitations of the services (e.g. inability to secure the service against unauthorised access);
  - iii. that the third party is providing the service on trial at no added financial cost to himself and under no obligation to purchase the service;
  - iv. that the third party is under the obligation not to use the trial service for commercial purposes; and
  - v. a liability clause stating any possible known risks and/or inconveniences involved with the trial being undertaken, and the extent of responsibility of the licensee with respect to these and other unknown risks and/or inconveniences to the third parties.

## **4. The Proposed Test and Trial licensing framework**

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The information contained under this section puts forward for consultation the proposed changes to the current test and trial licensing scheme for wireless services and technologies.

### **4.1 Applicability of the Test Licence**

As stated earlier in this document the purpose of the test licence is to carry out tests on innovative radio equipment. In order to increase flexibility on the applicability of this licensing regime the MCA is hereby proposing to remove the innovation element that is applicable to such licences. Hence, test licences will be granted for the purpose of carrying out tests on radio equipment and use of spectrum or technologies. The MCA however, considers that a test licence cannot involve members of the public or provide a service to third parties.

In addition, the current test licensing regime limits the undertaking of tests to a confined area, where communication signals need to be confined to a specific site. As a measure to provide additional flexibility on the applicability of the test licensing regime, the MCA is proposing that test licences will be granted to applicants that intend to carry out tests in a pre-determined site, that is not necessarily confined, on condition that the necessary safeguards are implemented to mitigate any risks of harmful interference. Such conditions will form part an integral part of the licence conditions.

### **4.2 Applicability of the Trial Licence**

In accordance with the current regime a trial licence can only be requested for the purpose of carrying out trials of innovative radio services involving members of the public or other third parties. This licence type is intended to give stakeholders the opportunity to become more acquainted with the innovative technology being examined, its benefits and associated pitfalls, and to be in a better position to evaluate its feasibility before proceeding to provide the service on a commercial basis (in accordance with the procedures set out at law).

In order to add more flexibility on the applicability of the trial licence type the MCA is proposing to remove the requirement to trial only innovative technologies, namely technologies that are not in use in Malta on the requested frequency band. The MCA considers that by removing this condition stakeholders will be in a better position to understand the technology they require to being assessed.

The current trial licensing regime require licence holders to carry out trials on a non-commercial and non-profit basis. In addition, any service offered under a trial licence must be at no cost to participating parties and the contract with third parties willing to trial the technology must, as a minimum, contain the following clauses:



- i. the period over which the trial shall be carried out and/or the duration of the contract with the third party;
- ii. details of the service being provided on trial, together with the risks and limitations of the services (e.g. inability to secure the service against unauthorised access);
- iii. that the third party is providing the service on trial at no added financial cost to himself and under no obligation to purchase the service; and
- iv. a liability clause stating any possible known risks and inconveniences involved with the trial being undertaken and the extent of responsibility of the licensee with respect to these and other unknown risks and/or inconveniences to third parties.

The MCA is of the view that these conditions are fair and is proposing to retain them.

#### **4.3 Licence application process**

In order to obtain a test or trial licence, the correct application form provided by the MCA must be duly filled in and filed with the Authority. A copy of the most recent Memorandum and Articles of Association and a copy of the Certificate of Registration need to accompany the application form<sup>10</sup>. Applications submitted by foreign entities will also be considered by the Authority.

In processing applications for the grant of test and trial licences the Authority will adopt the following principles:

- a) In issuing individual test and/or trial licences, the Authority will adopt open, transparent and non-discriminatory procedures, and no additional obligations will be imposed unless considered strictly necessary.
- b) Applications for test and/or trial licences in any part of the radio spectrum with no bandwidth limitations may be considered subject to the availability of spectrum on a first-come, first-served basis. Any pending requests for the grant of rights of use of the same spectrum will go in a queue.
- c) Test or trial licences will be given without prejudice to any decision that may be taken by the Authority to reassign spectrum in accordance with the National Frequency Plan. The Authority will in such cases act in accordance with the applicable provisions at law in particular of Part XI of the Electronic Communications Networks and Services (General) Regulations.
- d) Test and trial licences for the concurrent testing of services in identical frequency bands may also be granted on a case-by-case basis following an analysis carried out by the Authority.

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<sup>10</sup> This requirement will only apply to local commercial entities.

#### **4.4 Commercial General Authorisation requirements**

In accordance with the Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta) and the Electronic Communications Networks and Services (General) Regulations (S.L.399.28 of the Laws of Malta) a general authorisation is required for the provision of electronic communications networks and, or services in Malta. However, through the current test and trial licensing framework the MCA has decided to exempt all electronic communications networks and, or services being provided in Malta for the purposes of tests or trials from aforesaid requirements under the general authorisation regime. This exemption has been adopted pursuant to Article 19(4) of the above-mentioned Act.

The MCA intends to maintain this exemption for the general authorisation regime.

#### **4.5 Term of Test and Trial Licences**

##### **4.5.1 Test Licences**

The current test licensing regime establish that test licences may be issued for a maximum term of one year but it does not indicate whether this term may be extended further. The MCA considers that the term of test licences shall remain one-year but may be extended to further terms not exceeding one year, on a case-by-case basis, on condition that:

- i. a written request justifying why the licence needs to be extended is received;
- ii. a report detailing the testing activities being carried out in Malta is made available to the MCA;
- iii. the conditions of the test licence are respected;
- iv. no harmful interference problems are reported; and
- v. no requests are received from third parties for the assignment of the same spectrum.

##### **4.5.2 Trial Licences**

The current regime states that the period of a trial licence should be 12 months with the possibility of being extended for a further period of 12 months subject to a request made by the licensee, justifying why the licence needs to be extended.

The MCA considers that licences for trial licences should not be extended beyond the aforesaid 24 month time frame and the submission of a request by the same licensee for the grant of a licence having a similar scope will be rejected and returned to the licensee.

#### **4.6 Licence Fees**

The Authority considers that the current spectrum fees that are established under Part B of the 8<sup>th</sup> Schedule of the Electronic Communications Networks and Services (General) Regulations (S.L.399.28) are adequate and do not need to be revised.

Hence, the grant of a test licence will be charged €100 per annum. This fee may be reduced pro-rata for test licences that will be granted for a period of less than one year. A minimum fee of €100 shall, however, always be applicable.

Trial spectrum licences will be charged at €600 for the first 12-month licence term. This fee may be reduced pro rata for trial licenses that will be granted for a period of less than one year. A minimum fee of €100 shall, however, always be applicable. Should the trial licence need to be extended for the second and last term, the fee for the following 12 month period shall be €800.

#### **4.7 Conditions attached to rights of use of radio frequencies for test and trial purposes**

The general conditions to which individual test and trial licences will be subjected to are listed below. However, the MCA may include specific additional conditions in the licence, on a case by case basis and as it may deem fit to ensure compliance with the relevant laws, regulations and the Decisions of the Authority.

##### **4.7.1 General Conditions**

All test and trial licences will be subject to the following conditions:

1. Test and trial licences will not convey any exclusive rights to the use of the spectrum which is authorised under that licence.
2. Test and trial licences will be issued in favour of the licensee on a non-protection, non-interference basis. The Authority cannot guarantee protection against interference by the existing licensed users of the radio spectrum. Conversely, the licensee must, at all times, take all the necessary precautions to ensure that no interference is experienced by existing spectrum users as a result of radio transmissions using test and trial licences. If such interference does arise, operation of the system under test or trial will be required to cease immediately. Any costs that may be incurred by the Authority to deal with interference problems shall be borne by the licensee.
3. The licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) or any other appropriate standards as may be specified by law or by the Authority.

4. The holder of a test or trial licence shall comply with any decisions issued by the Authority in relation to electromagnetic radiation and harmful interference and ensure that the network and all services at all times comply with the technical and performance standards generally accepted by the industry or as may be prescribed by the Authority or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.
5. Any radio equipment used to carry out tests or trials must comply with the Radio Equipment Regulations (S.L. 427.41)<sup>11</sup>. The MCA may consider approving requests for the use of radio equipment that has not yet been certified to conform to these Regulations. If such requests are considered positively, the MCA may impose specific licence conditions or limitations, however so described, to avoid harmful interference, electromagnetic disturbances and risk to the health or safety of persons or of domestic animals or to property.
6. Although the Authority will not impose the technology or service to be used, the Authority will impose specific licence conditions or limitations, however so described, to ensure the efficient and effective use of radio frequencies, taking into account national and European Union law. Test or trial licence holders will however be entitled to provide the electronic communications network and/or services as defined during the licence application phase, subject to compliance with the licence conditions. No other technologies or services will be allowed without prior notification to, and written approval by, the Authority.
7. Test and trial licences may be terminated in advance by the licensee should the required tests or trials be finalised before the licence expiry date.
8. Test and trial licences can be terminated at any time by the Authority if the licence holder is in breach of any of the obligations as contained in the laws, subsidiary legislation, directives or in the licence.
9. The Authority will have the right to terminate a test or trial licence prior to its expiry date if it receives market interest for the grant of rights of use of the same spectrum authorised for use under the test or trial licence, giving less than two (2) weeks prior written notice. All payments affected by applicants in respect of the grant of such rights of use will not be refunded by the Authority.
10. Past and present holders of test and trial licences should not assume any preference should the specific frequency band used by them be issued for public assignment.
11. The Authority reserves the right to inspect an installation at any time to ensure that the system is configured and operating in accordance with the licence conditions.

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<sup>11</sup> These Regulations have transposed to national legislation the Radio Equipment Directive (2014/53/EU). Please refer to <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10778&l=1>.

12. The licensee shall comply with any request for information that the Authority may from time to time make, in accordance with law.
13. Licensees will be required to provide to the Authority a report detailing the results of the tests and trials carried out by the Licensee following licence termination. The report shall include aspects relating to harmful interference, propagation of the radio frequency spectrum and other spectrum management matters. Reports received by the Authority in this regard will be treated with the strictest confidentiality.
14. Any right, interest or entitlement resulting from a test or trial licence is not transferable and may only be exercised by the person identified in the licence document.
15. All national laws and decisions, however so described, shall apply to the licence holder and form an integral part of the licence grant, except in those cases where the undertaking is specifically exempted by the Authority.
16. Test and/or trial licence holders are not exempted from the obligation of diligently obtaining, at their own expense, any permits, licences or other approval or authorisation that may be necessary to construct, operate and maintain the services (or any part thereof) or from the obligation of complying with any condition associated with such permits, licences, other approvals or authorisations.

## 5. Consultation Questions

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1. Do you have any reservation with respect to applicability of test and trial licences, as described under section 4.1 and 4.2 hereof? Please provide justifications.
2. Do you have any comments on the licence application process described under section 4.3 hereof?
3. Do you agree with the proposed licence terms applicable to the test and to the trial licence as per section 4.5 hereof? Please justify in case of a negative position.
4. Do you agree with the conditions assigned with the right of use for the spectrum in question that are described under section 4.7 hereof? Please justify in case of a negative position.

The MCA would be pleased to receive comments and proposals on any other aspects that may be deemed relevant for the purposes of this consultation.

## 6. Consultation Framework

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In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the MCA welcomes written comments and representations from stakeholders during the consultation period which shall run from the 9<sup>th</sup> November 2016 to the 2<sup>nd</sup> December 2016.

For the sake of clarity and ease of understanding, the MCA encourages stakeholders to structure their comments in order and in line with the section numbers and sub-section numbers used throughout this document.

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state why the information should be treated as confidential.

For the sake of transparency, the MCA will publish a list of all respondents to this consultation. The MCA will take the necessary steps to protect the confidentiality of all such material in accordance with the MCA's confidentiality guidelines and procedures. Respondents are however encouraged to avoid confidential markings wherever possible.

All responses should be submitted to the MCA in writing by no later than **12.00hrs. CET on 2 December 2016** and addressed to the:

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Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the MCA deems fit. The MCA reserves the right to grant or refuse any such requests at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.