
Statement on the making of a limitation order in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum

Notice that Ofcom has made The Wireless Telegraphy (Limitation of Number of Licences) Order 2020

STATEMENT:

Publication date: 10 November 2020

Contents

Section

1. Overview	1
2. Notice	2
3. Regulatory impact assessment	3

Annex

A1. The Wireless Telegraphy (Limitation of Number of Licences) Order 2020	
---	--

1. Overview

This document provides notice that Ofcom has made The Wireless Telegraphy (Limitation of Number of Licences) Order 2020.

What we have decided – in brief

On 31 January 2019, we published a notice¹ of our proposals to make a number of statutory instruments in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum, including The Wireless Telegraphy (Limitation of Number of Licences) Order 2019.

On 21 May 2019, we published a statement² setting out our decision to make the statutory instruments, but stating that we would make the Wireless Telegraphy (Limitation of Number of Licences) Order 2019 at the same time as the Auction Regulations.

This document gives notice that we have now made the Wireless Telegraphy (Limitation of Number of Licences) Order 2020. It will come into force on 27 November 2020.

This overview is a simplified high-level summary only. The decisions we have made and our reasoning are set out in the full document.

¹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0029/148880/statement-auction-regulations.pdf

2. Notice

- 2.1 On 31 January 2019, we published a notice in respect of our proposals to make the following statutory instruments in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum (the “**January 2019 consultation**”)³:
- The Wireless Telegraphy (Limitation of Number of Licences) Order 2019;
 - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019;
 - The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019; and
 - The Wireless Telegraphy (Register) (Amendment) Regulations 2019.
- 2.2 The January 2019 consultation contained draft statutory instruments and invited comments on these by 12 March 2019.
- 2.3 On 21 May 2019, we published a statement setting out our decision to make each of the above statutory instruments, but stating that we would make the Wireless Telegraphy (Limitation of Number of Licences) Order 2019 at the same time as the Auction Regulations.⁴ We explained that this was because the proposed limitation order contained a reference to the Auction Regulations, which we had not yet made, and so we would make the limitation order as soon as we made the Auction Regulations.
- 2.4 We have now made the Auction Regulations⁵, and therefore we are now able to make the limitation order. This document therefore gives notice that we have now made the Wireless Telegraphy (Limitation of Number of Licences) Order 2020.
- 2.5 Section 3 of this document is a Regulatory Impact Assessment of our decision to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2020.
- 2.6 The Order will be available on www.legislation.gov.uk, which is the only authorised source for published statutory instruments, from 11 November 2020. However, a copy of the Order in draft form is also annexed to this notice for indicative purposes, in the form submitted for registration and publication after it was made by Ofcom.

³ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0029/148880/statement-auction-regulations.pdf

⁵ <https://www.legislation.gov.uk/uksi/2020/1199/contents/made>

3. Regulatory impact assessment

The Wireless Telegraphy (Limitation of Number of Licences) Order 2020

Introduction

- 3.1 The analysis set out in this document represents a regulatory impact assessment following Ofcom's notice of proposals to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2019 (the "**Limitation Order**"), published on 31 January 2019 (the "**January 2019 consultation**").⁶
- 3.2 Regulatory impact assessments are a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by many regulators. In producing the assessment in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Proposal, purpose and intended effect

- 3.3 In Ofcom's statement of 13 March 2020 (the "**Auction Statement**"),⁷ Ofcom set out its decisions to award national licences for spectrum in the 700 MHz and 3.6-3.8 GHz bands by means of an auction.
- 3.4 The Wireless Telegraphy (Licence Award) Regulations 2020 (the "**Auction Regulations**")⁸ set out the rules and procedures that Ofcom will apply in that auction. The Limitation Order that Ofcom has decided to make will complement the Auction Regulations.
- 3.5 In particular, the Limitation Order is intended to allow Ofcom to limit the number of users of the 700 MHz and 3.6-3.8 GHz bands through the award of licences, as opposed to exempting from licensing the use of radio equipment in these bands and so allowing an unlimited number of users. The purpose of limiting the number of users in this way is to secure efficient use of the electro-magnetic spectrum and efficient use, in particular, of the 700 MHz and 3.6-3.8 GHz bands.
- 3.6 The Limitation Order provides that, in determining the number of licences to be granted for the use of frequencies in the 700 MHz and 3.6-3.8 GHz bands and the persons to whom the licences will be granted, Ofcom shall apply the procedure set out in the Auction Regulations.

⁶ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

⁷ See: https://www.ofcom.org.uk/data/assets/pdf_file/0020/192413/statement-award-700mhz-3.6-3.8ghz-spectrum.pdf

⁸ See: <https://www.legislation.gov.uk/uksi/2020/1199/contents/made>

Costs for Ofcom to consider

- 3.7 The costs to Ofcom of limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands relate mainly to the costs of carrying out the award process and clearance of the spectrum. Ofcom has made regulations – the Auction Regulations – to auction licences for the use of the 700 MHz and 3.6-3.8 GHz bands. The administrative costs of the award will be small in relation to the benefit generated to the economy, and society more generally. The award process is unlikely to have a negative financial impact.
- 3.8 The following costs, to Ofcom and the public sector, are associated with our decision to auction the 700 MHz and 3.6-3.8 GHz spectrum:
- a) One-off administrative costs associated with making Statutory Instruments; and
 - b) Costs of carrying out the award process.
- 3.9 We consider that the level of costs in these categories are relatively low. For example, whilst there are costs of carrying out the award process itself, they amount to at most a few million pounds. In comparison with the likely consumer benefits generated by consumption of enhanced mobile services on 5G networks and we are confident that the costs of spectrum clearance will be significantly exceeded by these benefits.
- 3.10 In comparison, licence exempt use of the band would mean that Ofcom would not incur auction costs. However, as discussed below, the cost to business is likely to be relatively high under licence exemption because of the need to incur coordination costs to limit interference with other users and this would be unlikely to lead to the most efficient use of the 700 MHz and 3.6-3.8 GHz bands.

Cost to business, including small businesses and the voluntary sector

- 3.11 The business sector most likely to be affected by the Limitation Order is the mobile communications service provision sector. The types of service most likely to be provided using frequencies in the 700 MHz and 3.6-3.8 GHz bands are high-speed mobile broadband services.
- 3.12 Other business sectors are likely to benefit from a more efficient supply of communications services as a result of this decision.
- 3.13 The decision to license the 700 MHz and 3.6-3.8 GHz bands, as opposed to making their use licence-exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. However, if the use of these bands were licence-exempt, it would not be possible to impose any constraint on the number of users to ensure that these users coordinated with each other. On 25 January 2018, Ofcom published a statement⁹ of its decision to limit the number of licences to be awarded in

⁹ Ofcom's statement of 25 January 2018 entitled "Statement on the making of (i) a limitation order, and (ii) an amendment to the register regulations, in respect of the 2.3 and 3.4 GHz award"; see https://www.ofcom.org.uk/data/assets/pdf_file/0026/109790/limitations-order-registry-regulations.pdf

relation to the 2.3 GHz and 3.4 GHz bands, including a regulatory impact assessment of the Wireless Telegraphy (Limitation of Number of Licences) Order 2018. In that statement¹⁰, Ofcom said that Ofcom's technical research had shown that if the use of the 2.3 GHz and 3.4 GHz bands were licence-exempt, this would impose large costs due to interference between users, and that these costs would generally outweigh the benefits of licence exemption. We consider it reasonable to draw the same conclusions on the costs of licence exemption in 700 MHz and 3.6-3.8 GHz bands because the technologies used in these bands are likely to be the same as or similar to those used in the 2.3 GHz and 3.4 GHz bands.

- 3.14 Ofcom considers that the relative costs imposed on business by limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands are lower than the costs of making use of the spectrum licence exempt.
- 3.15 Ofcom does not consider that its decision to make the Limitation Order will have any material implications for the voluntary sector.

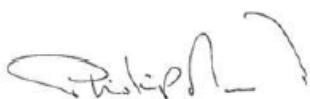
Conclusion

- 3.16 Ofcom has assessed the impact of limiting and not limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands and has concluded that the better option is to limit the number of licences. This is primarily because the number of users that would be likely to use the spectrum under licence exemption is large and would lead to all users incurring substantial costs in terms of interference and coordination with other users. Accordingly, the Limitation Order will be adopted so as to limit the number of licences awarded in respect of the 700 MHz and 3.6-3.8 GHz bands in accordance with the Auction Regulations.

Declaration

I have read this regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:



Philip Marnick
Group Director of Spectrum Group
For and by the authority of the Office of Communications

Date: 9 November 2020

¹⁰ Paragraph 2.12.

Contact point:

Selene Rosso
Legal team
The Office of Communications
Riverside House
2a Southwark Bridge Road
SE1 9HA
London

Telephone: 020 7981 3000

Email: selene.rosso@ofcom.org.uk

A1. The Wireless Telegraphy (Limitation of Number of Licences) Order 2020

STATUTORY INSTRUMENTS

2020 No. 1241

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Limitation of Number of Licences)
Order 2020**

Made - - - - *9th November 2020*

Coming into force - - *27th November 2020*

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 29(1) to (3) of the Wireless Telegraphy Act 2006(a) (the “Act”).

Before making this Order, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act, and considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2020 and shall come into force on 27th November 2020.

(2) This Order shall not extend to the Channel Islands and the Isle of Man.

Limitation of Licences

2.—(1) The Office of Communications (“OFCOM”) shall grant a limited number of wireless telegraphy licences for the use of the radio frequencies in the following frequency bands in the United Kingdom—

- (a) 703 to 733 megahertz;
- (b) 738 to 788 megahertz; and
- (c) 3680 to 3800 megahertz.

(2) In determining the number of licences to be granted for the use of the frequencies in these frequency bands and the persons to whom the licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2020(b).

Philip Marnick

Group Director, Spectrum Group

9th November 2020

For and by the authority of the Office of Communications

(a) 2006 c.36.
(b) S.I. 2020/1199.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the radio frequencies for which the Office of Communications (“OFCOM”) will grant wireless telegraphy licences.

Article 2(1) provides that a limited number of licences will be granted for the use of frequencies in the specified frequency bands. Article 2(2) sets out the criteria that OFCOM will apply in determining the limit on the number of licences and the persons to whom the licences will be granted.

A full regulatory impact assessment of the effect that this Order will have on the costs to business is available to the public from the OFCOM’s library at Riverside House, 2A Southwark Bridge Road, London, SE1 9HA (Tel. 020 7981 3000) and on OFCOM’s website at www.ofcom.org.uk. Copies of this assessment have also been placed in the libraries of both Houses of Parliament.