



Regulatory Impact Assessment
for the Wireless Telegraphy (White
Space Devices) (Exemption)
(Amendment) Regulations 2016

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Regulatory Impact Assessment

Introduction

- 1.1 The analysis set out in this document is a Regulatory Impact Assessment (RIA) following Ofcom's notice of proposals to make the the Wireless Telegraphy (White Space Devices) (Exemption) (Amendment) Regulations 2016 (the "Amendment Regulations"), published on 8 April 2016 (the "Notice").¹ It is consistent with Government practice on RIAs and Ofcom's duty under section 7 of the Communications Act 2003 (the "2003 Act").
- 1.2 RIAs provide 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 regulators, including Ofcom. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Background to these Regulations

- 1.3 On 31 December 2015 the Wireless Telegraphy (White Space Devices) (Exemption) Regulations 2015 came into force (the "2015 Regulations"). These Regulations give effect to our earlier policy decision to allow a new type of technology – white space devices (WSDs) to access unused parts of the radio spectrum in the 470 to 790 MHz UHF TV band ("TV White Spaces" or TVWS) on a licence exempt basis. The RIA relating to the 2015 Regulations can be found on our website².
- 1.4 The 2015 Regulations require WSDs to transmit in accordance with operational parameters obtained from a white space database (WSDB) operated by an organisation listed in Schedule 1 of those Regulations. Those organisations must have entered into contractual arrangements with Ofcom and have successfully completed the Qualification Assessment as required under the contract. This means that they have demonstrated to Ofcom's satisfaction that they comply with the technical requirements for a WSDB that provides services to WSDs as set out in the contract.
- 1.5 Since the 2015 Regulations came into force three further organisations have now demonstrated to Ofcom's satisfaction that they comply with the technical requirements for a WSDB that provides services to WSDs as set out in the contract. These are: the Council for Scientific and Industrial Research (CSIR); Google UK Limited and Microsoft Ireland Operations Limited.
- 1.6 It is necessary to amend the 2015 Regulations to include the additional organisations in the list at Schedule 1 of the 2015 Regulations such that WSDs would be able to obtain operational parameters from the databases operated by the those organisations.

¹ <http://stakeholders.ofcom.org.uk/consultations/TVWS-amendment-regulations-apr16>

² <http://stakeholders.ofcom.org.uk/spectrum/tv-white-spaces/consultations-statements/tvws-regulations-2015/>

Our duties under the Wireless Telegraphy Act 2006

- 1.7 In the UK, Ofcom is responsible for authorising civil use of the radio spectrum and achieves this by granting wireless telegraphy licences under the Wireless Telegraphy Act 2006 (the “WT Act”) and by making regulations exempting users of particular equipment from the requirement to hold such a licence. Under section 8(1) of the WT Act, it is an offence to install or use wireless telegraphy equipment without holding a licence granted by us, unless the use of such equipment is exempted.
- 1.8 Section 8(4) of the WT Act requires that Ofcom must make regulations to exempt the use of WT equipment if the conditions in section 8(5) of the WT Act are met, namely that its installation or use is not likely to:
- involve undue interference with wireless telegraphy;
 - have an adverse effect on technical quality of service;
 - lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - endanger safety of life;
 - prejudice the promotion of social, regional or territorial cohesion; or
 - prejudice the promotion of cultural and linguistic diversity and media pluralism.
- 1.9 In accordance with the requirements of section 8(3B) of the WT Act, the terms, provisions and limitations specified in licence exemption regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.

The citizen and consumer interest

- 1.10 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. We must, in particular, secure the optimal use for wireless telegraphy of spectrum and have regard to the principle under which all regulatory activities should be targeted only at cases in which action is needed.
- 1.11 Our statement “Implementing TV White Spaces” published on 12 February 2015 (the “TVWS Statement”)³ sets out the reasons why we considered that it is appropriate to

³ <http://stakeholders.ofcom.org.uk/consultations/white-space-coexistence/statement>

authorise the use of WSDs in the UHF TV band through licence exemption and the benefit to citizens and consumers, in particular for the following reasons:

- i) The measures concern the use of radio equipment on a licence exempt basis, which generally entails the least regulatory and administrative burden on our stakeholders compared to other forms of authorisation, such as individual licences.
- ii) There may be a wide variety of use cases for White Space technology. Some of the applications for TVWS that have been proposed by industry could potentially lead to mass market consumer use of devices and/or deployments of a very large number of devices – for example for machine to machine applications. These new licence exemptions therefore support the introduction of new and innovative technologies that will be of benefit to citizens and consumers and therefore are likely to remove barriers to access to the spectrum, foster innovation and competition in the development of WSDs, and thereby result in benefits to consumers.
- iii) Licence exemption is introduced only on the basis that use of devices on a licence-exempt basis would not be likely to lead to harmful interference to other spectrum users or have an adverse impact on technical quality of service, provided that devices:
 - operate under the control of a geolocation database qualified by Ofcom; and
 - comply with a set of technical and operational requirements that we consider are necessary to avoid harmful interference.

1.12 The addition of three organisations which can provide white space database services enhances these benefits by providing greater choice to white space device users.

Equality Impact Assessment

1.13 In carrying out our functions, we are also under a general duty under the Equality Act 2010⁴ to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups, in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

1.14 We fulfil the above duties through an Equality Impact Assessment (EIA).

1.15 Following an analysis undertaken in relation to these Regulations, we have concluded that the policy does not have a significant differential impact on different racial groups, on disabled citizens or consumers or other identified equality groups. Nor have we seen the need to carry out separate EIAs in relation to the additional equality groups in Northern Ireland (religious belief, political opinion and dependants) because we anticipate that the Regulations will not have a differential impact in Northern Ireland compared to consumers in general.

⁴ 2010 c. 15, <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

Summary of the Amendment to the 2015 Regulations

1.16 As noted in the TVWS Statement we may need to periodically update the list of organisations in Schedule 1 of the 2015 Regulations as new databases become qualified or in order to remove a database operator. In this instance the organisations identified in paragraph 1.5 have qualified to provide WSDB services and the Amendment Regulations add them to the list of organisations at Schedule 1 of the 2015 Regulations. The full list of those organisations as set out at Schedule 1 of the 2015 Regulations will be the following:

- The Council for Scientific and Industrial Research (CSIR), a statutory body established under South African legislation;
- Fairspectrum Oy, a company registered in Finland with company number 2372718-1;
- Google UK Limited, a company registered in the United Kingdom with company number 03977902;
- Microsoft Ireland Operations Limited, a company registered in the Republic of Ireland with company number 256796;
- Nominet UK, a company registered in the United Kingdom with company number 03203859;
- Sony Europe Limited, a company registered in the United Kingdom with company number 02422874; and
- Spectrum Bridge Incorporated, a company incorporated in the State of Delaware, United States of America.

1.17 No other changes to the 2015 Regulations have been made.

Analysis of the different options

1.18 The following section assesses the impact of options open to Ofcom by reference to the principal changes that were made by the Amendment Regulations.

To amend the 2015 Regulations

1.19 As noted in the TVWS Statement we may need to periodically update the list of organisations in Schedule 1 of the 2015 Regulations as new databases become qualified or in order to remove a database operator. The addition of three organisations which can provide white space database services provides greater choice to white space device users.

1.20 We consider that amending the 2015 Regulations is likely to generate a net benefit for UK businesses, citizens and consumers and at worst would have a neutral outcome (to the extent that benefits depend on the uptake of licence exempt WSDs). Therefore the effect of implementing the measures is likely to be positive overall.

1.21 There are one-off administrative costs associated with amending Statutory Instruments. We consider the implementation costs to be low.

Not to amend the 2015 Regulations

- 1.22 By not amending the 2015 Regulations the three newly qualified organisations would not be able to provide white space database services which would reduce options for white space device users.
- 1.23 By not amending the 2015 Regulations there would be no additional cost imposed on Ofcom relating to amending this Statutory Instrument.

The preferred option

- 1.24 For the reasons set out above, our preferred option is to make the Amendment Regulations. We consider this is consistent with Ofcom's duties as well as its policy decisions. We have therefore decided to make the Wireless Telegraphy (White Space Devices) (Exemption) (Amendment) Regulations 2016.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

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