



Notice of Ofcom's proposal to
amend the Wireless Telegraphy
(Licence Charges for the 900 MHz
frequency band and the 1800 MHz
frequency band) (Amendment and
Further Provisions) Regulations
2015

| | |
|-----------------------------|---------------|
| | Consultation |
| Publication date: | 13 April 2016 |
| Closing Date for Responses: | 16 May 2016 |

About this document

Ofcom is today consulting on a proposal to amend the regulations setting the fees payable for the 900 MHz and 1800 MHz spectrum.

The fees are paid annually by mobile network operators for the 900 MHz and 1800 MHz spectrum bands, which they use to provide voice and data services using a mix of 2G, 3G and 4G technologies.

Earlier this year the Office for National Statistics changed the reference year (in which CPI = 100) used to calculate the all items consumer price index from 2005 to 2015. This consultation reflects that change.

The proposed amendments would ensure the method for calculating the fees payable for the 900 MHz frequency band and the 1800 MHz frequency band remains the same as intended by Ofcom's decision of 24 September 2015. Specifically, these regulations would ensure the licence fees payable for the 900 MHz and 1800 MHz spectrum from 31st October 2016 onwards continue to vary in line with inflation, as provided for in that decision.

The closing date for responses to this consultation is **16 May 2016**. Following consideration of consultation responses, we intend to make the final regulations as soon as practicable.

Contents

| Section | | Page |
|---------|---|------|
| 1 | Notice | 3 |
| 2 | The proposed Regulations and their general effect | 5 |
| Annex | | Page |
| 1 | Responding to this consultation | 9 |
| 2 | Ofcom's consultation principles | 11 |
| 3 | Consultation response cover sheet | 12 |
| 4 | Consultation question | 14 |
| 5 | Draft of the Proposed Regulations | 15 |

Section 1

Notice

Notice of Ofcom's proposal

- 1.1 This notice is given in accordance with section 122(4) and (5) of the Wireless Telegraphy Act 2006 (the '**2006 Act**') and covers a proposal to make the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016 (the '**Proposed Regulations**').
- 1.2 The Proposed Regulations would amend regulation 6(2) and 7(2) of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015¹ (the '**Principal Regulations**').

Proposed Regulations

- 1.3 The Proposed Regulations would replace the current reference in the formulae in regulations 6(2) and 7(2) of the Principal Regulations to "125.6", which is the all items consumer price index ("**CPI**") for March 2013 calculated by the Office for National Statistics as applicable at the time when Ofcom made the Principal Regulations, with a reference to "98.1", which is CPI for March 2013 as subsequently calculated by the Office for National Statistics in line with its latest methodology for calculating the CPI.
- 1.4 A draft of the Proposed Regulations is set out at Annex 5 and their general effect is set out at Section 2 of this document.

Comments or representations

- 1.5 Comments or representations with respect to the proposed regulations are invited by **16 May 2016**. Comments should be sent using the online web form at <http://stakeholders.ofcom.org.uk/consultations/900-MHz-1800-MHz-frequency-bands/howtorespond/> or, for larger consultation responses, using the following email address: ALF@ofcom.org.uk. Responses may alternatively be posted to the address below, marked with the title of the consultation:

Robert Emson
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

- 1.6 Following consideration of consultation responses, we intend to make the final regulations as soon as practicable.
- 1.7 Hard copies of this notice and the proposed regulations can be obtained from:

Robert Emson
Ofcom

¹ S.I. 2015/1709.

Riverside House
2a Southwark Bridge Road
London SE1 9HA

E-mail: Robert.emson@ofcom.org.uk
Tel: 020 7783 4375

- 1.8 Electronic copies are also available and this notice has been placed on Ofcom's website <http://www.ofcom.org.uk>.

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Section 2

The proposed Regulations and their general effect

The legislative framework

- 2.1 Ofcom sets the sums payable in respect of wireless telegraphy licences by way of regulations made under section 12 of the Wireless Telegraphy Act 2006 (the '**2006 Act**'). When doing so, Ofcom must comply with section 122 of the 2006 Act, which is a general provision about matters relating to Ofcom's power to make statutory instruments, including fees regulations under section 12 of the 2006 Act. This provision includes a requirement that, where we are proposing to make regulations, we must publish a notice setting out the general effect of the regulations and give a period of at least one month within which representations on the proposed regulations may be made to us. Section 122(7) of the 2006 Act enables Ofcom to make different provisions for different cases and to make incidental provisions.
- 2.2 On 23 December 2010, the Secretary of State made directions pursuant to section 5 of the 2006 Act, which among other things require Ofcom to revise the sums prescribed by regulations under section 12 of the 2006 Act for 900 MHz and 1800 MHz licences so that they reflect the full market value of the frequencies in those bands.
- 2.3 The directions are contained in The Wireless Telegraphy Act 2006 (Directions to Ofcom) Order 2010 (S.I. 2010/3024) (the "**Directions to OFCOM Order**").

The Principal Regulations

- 2.4 On 23 September 2015, in order to give effect to article 6 (paragraphs 1 and 2) of the Directions to OFCOM Order, Ofcom made the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015² (the '**Principal Regulations**'), which amended the Wireless Telegraphy (Licence Charges) Regulations 2011 (the "**2011 Fees Regulations**")³. Specifically, the Principal Regulations removed the level of the fees payable for the 900 MHz and 1800 MHz licences from the 2011 Fees Regulations and prescribed the new fee levels for these licences.
- 2.5 According to article 6(2) of the Directions to OFCOM Order, in revising the fees payable for the 900 MHz and the 1800 MHz bands, Ofcom must have particular regard to the sums bid for licences in the UK auction for the 800 MHz and 2600 MHz bands (the '**UK 4G auction**'), which was completed in March 2013. In line with this provision, Ofcom set the revised fees by reference to its estimate of the market value for 900 MHz spectrum and 1800 MHz spectrum at the time of the UK 4G auction (i.e. the 'base levels'). The 'base levels' were therefore expressed in March 2013 prices, which is when the 4G auction was completed.
- 2.6 Under regulations 6 and 7 of the Principal Regulations, the fees payable for the 900 MHz and the 1800 MHz bands from 31st October 2016 onwards are to be

² S.I. 2015/1709.

³ S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334.

determined in accordance with a formula that adjusts the ‘base levels’⁴ every year by inflation. The ‘base date’ for the purpose of the inflation adjustment is March 2013, this being the month in which the UK 4G auction was completed. The index used in the Principal Regulations to give effect to the adjustment to inflation is the all items consumer price index (“CPI”), which is calculated and published on a monthly basis by the Office for National Statistics.

- 2.7 As explained in Ofcom’s Statement of 24 September 2015 (“*Annual licence fees for 900 MHz and 1800 MHz spectrum*”)⁵ and Ofcom’s Notice of 1 August 2014 (“*Notice of Ofcom’s proposal to make regulations to revise the fees payable for 900 MHz and 1800 MHz licences*”)⁶, the formulae set out in regulations 6(2) and 7(2) of the Principal Regulations use the following CPI figures for the adjustment to inflation:
- a) the latest available CPI at the date falling one month before the date when the fees are due (i.e. “*P*”, defined as “*the most recent CPI that is available on 30th September of the year in which the charges are due*”). Inflation data related to each month is usually published by the Office for National Statistics in the second half of the following month. Therefore, this should normally be the CPI for the month of August immediately preceding the payment date (e.g. the CPI for August 2016 should be used to calculate the fees payable on 31st October 2016); and
 - b) the CPI for March 2013. When Ofcom made the Principal Regulations, the CPI for March 2013, as calculated and published by the Office for National Statistics, was equal to 125.6⁷. This was calculated by the Office for National Statistics using 2005 as the “reference year” (i.e. for each component, the average of the monthly indices of that year were set to equal 100).

The Proposed Regulations and their general effect

- 2.8 In its Statistical Bulletin of 16 February 2016⁸, which relates to the CPI for January 2016, the Office for National Statistics started calculating CPI using 2015 as the new reference year. Therefore, we expect that the Office for National Statistics will continue to use 2015 as the reference year for calculating CPI, until a new re-referencing takes place.
- 2.9 In light of this change of methodology (the “re-referencing”), we need to amend the Principal Regulations to ensure consistency between the figure representing the CPI for March 2013, as stated in the regulations, and the other relevant CPI figure which goes into the formula to determine the level of the fees payable each year (i.e. “*P*”).

⁴ The ‘base levels’ for the annual licence fees (expressed in March 2013 prices) are: (a) £451,200 per each 2 x 200 kHz channel in the 900 MHz band and (b) £326,000 per each 2 x 200 kHz channel in the 1800 MHz band.

⁵ See paragraphs 8.46-8.54 of Ofcom’s Statement:

<http://stakeholders.ofcom.org.uk/consultations/annual-licence-fees-further-consultation/statement/>

⁶ See paragraphs 2.42-2.46 and 2.49 of Ofcom’s Notice:

<http://stakeholders.ofcom.org.uk/consultations/notice-proposal-fees/>

⁷ See the Statistical Bulletin of 16 April 2013, related to March 2013 (Table A, p. 4):

http://webarchive.nationalarchives.gov.uk/20160105160709/http://ons.gov.uk/ons/dcp171778_306185.pdf

⁸ <http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/january2016>

- 2.10 The Office for National Statistics has published full back series of the revised indices, including all consumer price indices preceding January 2016, re-referenced to 2015⁹. The CPI for March 2013, as re-referenced to 2015 by the Office for National Statistics, is 98.1. We therefore propose to substitute 98.1 for 125.6, which is the figure representing the CPI for March 2013, as currently stated in the Principal Regulations.
- 2.11 We note that the Office for National Statistics has also published the CPI conversion factor to help/enable users to convert the CPI new series (referenced to 2015=100) published in February 2016 to the old series (referenced to 2005=100)¹⁰. However, given that the Office for National Statistics should continue to use 2015 as the reference year for any future publication of CPI in its Statistical Bulletin (until any subsequent re-referencing), we consider it more appropriate to update the CPI for March 2013 rather than to convert the CPI that will be published for August 2016 (and for the month of August in any subsequent year) in line with the previous methodology adopted by the Office for National Statistics (i.e. using 2005, instead of 2015, as the reference year).
- 2.12 The Proposed Regulations would amend regulation 6(2) of the Principal Regulations, which sets out the formula for calculating the licence fees for 900 MHz spectrum payable from 31st October 2016 onwards, by replacing “125.6” with “98.1”.
- 2.13 Similarly, the Proposed Regulations would amend regulation 7(2) of the Principal Regulations, which sets out the formula for calculating the licence fees for 1800 MHz spectrum payable from 31st October 2016 onwards, by replacing “125.6” with “98.1”.
- 2.14 As explained above, the general effect of the proposed changes would be to ensure consistency between the figure representing the CPI for March 2013, as stated in the Principal Regulations, and the other relevant CPI figures which go into the formula to determine the level of the fees payable each year (“*P*”). This would continue to give effect to Ofcom’s Statement of 24 September 2015 and ensure that these fees will vary in line with inflation. In other words, this amendment would ensure that the method for determining the fees payable for the 900 MHz frequency band and the 1800 MHz frequency band remains the same as intended by that Statement and given effect to by the Principal Regulations made at that time.
- 2.15 For the avoidance of doubt, the proposed changes would apply to all licence fees for 900 MHz and 1800 MHz spectrum payable from October 2016 onwards (i.e. those payable on October 2016 and on each anniversary of that date). They would not apply to the fees payable according to regulations 4 and 5 of the Principal Regulations on the first payment date following the entry into force of those Regulations (i.e. on 31st October 2015, 28th February 2016 and 31st July 2016). We calculated these fees using the CPI for August 2015¹¹ and the CPI for March 2013, as available at the time of making the Regulations (i.e. 125.6), which were both referenced to the same year (2005 = 100).

⁹ <http://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt>

¹⁰ <http://www.ons.gov.uk/economy/inflationandpriceindices/adhocs/005396cpiconversionfactorforrereferencing2015100>

¹¹ The CPI for August 2015, as calculated by the Office for National Statistics using 2005 as the reference year and published in its Statistical Bulletin of 15 September 2015 (see Table A, p. 5), is 128.4: <http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/2015-09-15>

- 2.16 In line with the Principal Regulations, the Proposed Regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man¹².
- 2.17 A draft of the Proposed Regulations is set out at Annex 5.

¹² See regulation 1(2) of the Principal Regulations.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written comments or representations on the Proposed Regulations, to be made **by 5pm on 16 May 2016**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/900-MHz-1800-MHz-frequency-bands/howtorespond/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email ALF@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Robert Emson
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include a direct answer to the question asked in this document, which is highlighted at Annex 4. It would also help if you can explain why you hold your views.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Robert Emson on 020 7783 4375.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/website/terms-of-use/>

Ofcom's consultation processes

- A1.11 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.12 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.13 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7783 4652

Email Steve.Gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

| | | | |
|----------------------|--------------------------|---|--------------------------|
| Nothing | <input type="checkbox"/> | Name/contact details/job title | <input type="checkbox"/> |
| Whole response | <input type="checkbox"/> | Organisation | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? | |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Do you have any comments or representations on the proposed statutory instrument set out in this notice?

Draft of the Proposed Regulations

STATUTORY INSTRUMENTS

2016 No. 0000

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016

| | | |
|--------------------------|---------|------|
| <i>Made</i> | - - - - | 0000 |
| <i>Coming into force</i> | - - | 0000 |

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 12, 13(2) and 122(7) of the Wireless Telegraphy Act 2006(a) (the “Act”) and as required by article 6(1) and (2) of the Wireless Telegraphy Act (Directions to OFCOM) Order 2010(b).

Before making these Regulations, 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 have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016 and shall come into force on [0000].

Amendment to the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015

2.—(1) The Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015(c) shall be amended in accordance with paragraphs (2) and (3).

(2) In the formula set out in regulation 6(2), for “125.6” substitute “98.1”.

(3) In the formula set out in regulation 7(2), for “125.6” substitute “98.1”.

(a) 2006 c. 36.
(b) S.I. 2010/3024.
(c) S.I. 2015/1709.

Philip Marnick

Group Director, Spectrum Group

[date]

For and by the authority of the Office of Communications

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015 (S.I. 2015/1709) (the “principal Regulations”), which revised the level of fees payable to OFCOM in respect of the licences of the Public Wireless Networks licence class granted under section 8 of the Wireless Telegraphy Act 2006 (c. 36) for the use of the frequencies in the bands 880.0–960.0 MHz and 1710.0–1880.0 MHz.

Regulations 6(2) and 7(2) of the principal Regulations set out the formulae for calculating the fees payable from 31st October 2016 onwards. These formulae include “125.6”, which is the all items consumer price index (the “CPI”) for March 2013 as calculated by the UK Statistics Authority and applicable at the time when the principal Regulations were made. Regulation 2 of these Regulations replaces “125.6” with “98.1”, which is the CPI for March 2013 as subsequently calculated by the UK Statistics Authority in line with their latest methodology for calculating the CPI. The effect of the amendment is to ensure that the formulae referred to above continue to operate as intended when the principal Regulations were made, in light of the change to the UK Statistics Authority’s methodology for calculating the CPI.

A full impact assessment has not been produced for this instrument. A full impact assessment has been produced by the Department for Business, Innovation and Skills in relation to the Wireless Telegraphy Act (Directions to OFCOM) Order 2010 (S.I. 2010/3024), which the principal Regulations implement. A copy of that impact assessment is available from Information Economy, Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET or at <http://www.legislation.gov.uk/uksi/2010/3024/impacts>.