
Decision to make the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2018

Implementing the Commission Decision on Short
Range Devices

Statement:

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About this document

This document sets out Ofcom's decision to make new regulations by statutory instrument. These regulations amend the existing Wireless Telegraphy licence exemption criteria for short range devices (SRDs).

Every day, most of us use an SRD. These range from car key-fobs and baby monitors to garage door openers and Wi-Fi systems. These regulations implement a decision by the European Commission that harmonises the frequencies and technical parameters for these devices across Europe, and enable people to use various kinds of SRDs in the UK without a licence.

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1. Executive summary

Notice of proposals

- 1.1 This statement confirms that, following consultation, we have decided to make regulations to amend the licence exemption authorisation in relation to Short Range Devices (SRDs). On 27 February 2018 we made the Wireless Telegraphy (Exemption and Amendment) Regulations 2018 (the “Regulations”) which will come into force on 21 March 2018. We have however decided to create separate regulations that deal with certain mobile phone repeaters for static indoor use and for low gain in-vehicle use. We will be publishing further information on these introduction of these regulations shortly.
- 1.2 On 20 November 2017, we published the “Notice of proposal to make the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2018” (the “Notice”)¹ in accordance with sections 122(4) and (5) of the Wireless Telegraphy Act 2006 (the “2006 Act”). The Notice set out how we intended, by way of the (proposed) Regulations, to amend the Wireless Telegraphy (Exemption) Regulations 2003 (the “2003 Exemption Regulations”) and the Wireless Telegraphy (Exemption and Amendment) Regulations 2010 (the “2010 Exemption Regulations”).

Comments and representations

- 1.3 The proposed Regulations were designed, in relation to SRDs, to implement the European Commission Decision 2006/771/EC² (the “2017 SRD Amendment Decision”). In relation to mobile repeaters, they were designed to implement the decision we made in October 2017 (the “Repeater Decision”)³ to create an exemption from the need for a licence, under the 2006 Act, to establish, install and use (“deploy”⁴) certain kinds of repeater device. In accordance with the requirements of sections 122(4) and (5) of the 2006 Act, the Notice gave statutory notice of our proposal to make the Regulations and asked for comments on whether the proposed Regulations correctly implement these decisions.
- 1.4 We received four responses to the Notice, all of which related to aspects of the Regulations relating to the authorisation of certain mobile phone repeaters. These comments relate to the regulations concerning mobile repeaters and will be addressed in our further document.

1 https://www.ofcom.org.uk/_data/assets/pdf_file/0025/107935/Implementing-decisions-SRDs.pdf

2 Commission Implementing Decision of 8 August 2017 amending Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices and repealing Decision 2006/804/EC (EU 2017/1483) - see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1483&from=en>

3 https://www.ofcom.org.uk/_data/assets/pdf_file/0019/107254/Repeaters-Statement-2017.pdf

4 For ease of reference in this statement, we refer to the establishment, installation and use of devices as “deployment” unless otherwise stated.

Decision

- 1.5 Taking carefully into account the responses received, we have decided to make the Regulations as proposed in relation to SRDs. We have decided to set out the regulations for low gain in-vehicle repeaters and the deployment of certain mobile phone repeaters for static indoor use in another SI. The comments received, our response to these and our decision will be set out in our further document that will be published shortly.

Regulations

- 1.6 Ofcom is responsible for authorising use of the radio spectrum. We permit the use of the radio spectrum either by granting wireless telegraphy licences under the 2006 Act or by making statutory regulations exempting users of particular equipment from the requirement to hold such a licence. It is unlawful and an offence to install or use wireless telegraphy apparatus without holding a licence granted by Ofcom, unless the use of such equipment is exempted.
- 1.7 The Regulations we have made:
- implement the 2017 SRD Amendment Decision; and
 - revoke the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) Regulations 2005 (the “RFID Regulations”), as they are now included in the 2017 Amendment Decision.
- 1.8 The Regulations were made on 27 February 2018 and will enter force on 21 March 2018. Copies of the Regulations can be obtained from <http://www.legislation.gov.uk/>.

2. Background

The legislative framework

- 2.1 Ofcom's responsibilities for spectrum management are set out primarily in two Acts of Parliament which confer on us our specific functions, powers and duties: The Communications Act 2003 (the "2003 Act") and the 2006 Act. Amongst our functions and powers are the making available of frequencies for use for particular purposes and the granting of rights of use of spectrum through wireless telegraphy licences and licence exemptions.
- 2.2 Our principal duties under the 2003 Act, when carrying out our functions and exercising our powers, are to further the interests of citizens and consumers, where appropriate by promoting competition. In doing so, we are also required (among other things) to secure the optimal use of spectrum and the availability throughout the United Kingdom of a wide range of electronic communications services.
- 2.3 We must also have regard to (i) the desirability of promoting competition in relevant markets; (ii) the desirability of encouraging investment and innovation in relevant markets; (iii) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it; and (iv) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 2.4 Additionally, in carrying out our spectrum functions we have a duty under section 3 of the 2006 Act to have regard in particular to: (i) the extent to which the spectrum is available for use or further use for wireless telegraphy; (ii) the demand for use of that spectrum for wireless telegraphy; and (iii) the demand that is likely to arise in future for such use.
- 2.5 We also have a duty to have regard to the desirability of promoting: (i) the efficient management and use of the spectrum for wireless telegraphy; (ii) the economic and other benefits that may arise from the use of wireless telegraphy; (iii) the development of innovative services; and (iv) competition in the provision of electronic communications services.
- 2.6 Ofcom's powers in relation to spectrum licences and exemptions include those in section 8 of the 2006 Act. Under section 8 (1), it is unlawful to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus except under and in accordance with a wireless telegraphy licence granted under the 2006 Act.
- 2.7 Under section 8 (3) of that Act, Ofcom may make regulations exempting from the licensing requirements under section 8 (1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or description as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be specified.

- 2.8 Under section 8(4) of the 2006 Act, we must make regulations to exempt equipment if 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.
- 2.9 In accordance with the requirements of section 8(3B) of the 2006 Act, the terms, provisions and limitations specified in the 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.
- 2.10 We make exemption regulations by means of a statutory instrument. Before making any such regulations, we are required by section 122(4) of the 2006 Act to give notice of our proposal to do so. Under section 122(5), the notice must state that we propose to make the regulations in question, set out their general effects, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time period of at least one month during which any representations with respect to the proposal must be made to us.

2017 SRD Amendment Decision

- 2.11 Commission Decision 2006/771/EC (the “SRD Decision”) harmonises the technical conditions for use of spectrum for a wide variety of short-range devices (SRDs), including applications such as alarms, door openers, medical implants and intelligent transport systems. SRDs are typically mass-market and/or portable products which can easily be taken and used across borders. Differences in spectrum access conditions therefore prevent their free movement, increase their production costs and create risks of harmful interference with other radio applications and services. For this reason, the European Commission put in place a regulatory framework for short-range devices to support innovation.
- 2.12 On 5 July 2006, the European Commission issued a permanent mandate to the European Conference of Postal and Telecommunications Administrations (CEPT), pursuant to Article 4(2) of Decision No 676/2002/EC, to update the Annex to Decision 2006/771/EC in response to technological and market developments in the area of SRDs.

- 2.13 Commission Decisions 2008/432/EC, 2009/381/EC and 2010/368/EU and Commission Implementing Decisions 2011/829/EU and 2013/752/EU have already amended the conditions for SRDs laid down in the SRD Decision.
- 2.14 In July 2016, as part of its mandate, CEPT submitted Report 59⁵ to the European Commission outlining changes that it recommended to the current SRD Decision. The report was used as the basis for the 2017 SRD Amendment Decision.
- 2.15 In addition, in July 2014 the Commission asked CEPT whether the technical requirements for Radio Frequency Identification devices (RFID), subject to a separate Commission Decision, could be merged with the SRD Decision. The report presented by CEPT showed that these could be included in the SRD Decision. Therefore, the 2017 SRD Amendment Decision also repeals the separate Commission Decision on RFIDs 2006/804/EC.
- 2.16 The 2017 SRD Amendment Decision introduces the following changes to the SRD Decision:
- 40.66 to 40.7 MHz are designated for use for non-specific SRDs.
 - 173.965 to 216 MHz are designated for use for Assistive Listening Devices (ALD).
 - 446.0 to 446.2 MHz: the use of these frequencies for PMR446 is now included in the SRD Decision.
 - 863 to 865 MHz are designated for use for non-specific SRDs.
 - 863 to 868 MHz are designated for use for wideband data transmission devices. The usage conditions are only available for wideband SRDs in data networks.
 - 865 to 868 MHz: the use of these frequencies for Radio Frequency Identification (RFID) devices is now included in the SRD Decision. The EC Decision 2006/804/EC has been repealed.
 - 865 to 868 MHz are designated for use for non-specific SRDs at 500 mW e.r.p. Transmissions are only permitted within the bands 865.6 to 865.8 MHz, 866.2 to 866.4 MHz, 866.8 to 867.0 MHz and 867.4 to 867.6 MHz. This is only available for data networks.
 - 2483.5 to 2500 MHz are designated for use for medical data acquisition at 1 mW e.i.r.p. This is only available for medical body area network system (MBANS) for indoor use within healthcare facilities.
 - 2483.5 to 2500 MHz are designated for use for medical data acquisition at 10 mW e.i.r.p. This is only available for MBANS for indoor use within the patient's home.
 - 5795 to 5815 MHz: a change is made to the Transport and Traffic Telematics (TTT) devices allocations for 2 W e.i.r.p. This is only available to road tolling applications.
 - 76 to 77 GHz are designated for use for TTT devices with a 30 dBm peak e.i.r.p. and 3 dBm/MHz average power spectral density. The usage conditions are only available to obstacle detection systems for rotorcraft use.

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<http://www.ecodocdb.dk/doks/filedownload.aspx?fileid=4337&fileurl=http://www.erodocdb.dk/Docs/doc98/official/pdf/CEPTREP059.PDF>

- 122 to 122.25 GHz are designated for use for non-specific SRDs operating at 10 dBm e.i.r.p./250 MHz and – 48 dBm/MHz at 30° elevation.
- 122.25 to 123 GHz frequencies are designated for use for non-specific SRDs at 100 mW e.i.r.p.

2.17 In the UK we have already implemented a number of these changes. These were introduced in 2015 when the CEPT Recommendation 70-03⁶ was previously updated. We will therefore be only implementing the changes that are not currently covered by the existing licence exemption regulations. These are set out in Table 1 below.

Table 1: Current implementation status of SRDs contained in 2017 SRD Amendment Decision

Device	UK status
40.66 to 40.7 MHz for Non-specific SRDs.	Already exempt from licensing.
173.965 to 216 MHz for ALD	Not currently exempt from licensing.
446.0 to 446.2 MHz for PMR446	Current exemption needs to be amended.
863 to 865 MHz for Non-specific SRDs	Already exempt from licensing.
863 to 868 MHz for Wideband data transmission devices	Not currently exempt from licensing.
865 to 868 MHz for RFID devices	Current exemption needs to be amended.
865 to 868 MHz for Non-specific SRDs	Not currently exempt from licensing.
2483.5 to 2500 MHz for Medical data acquisition for MBANS for indoor use within healthcare facilities	Not currently exempt from licensing.
2483.5 to 2500 MHz for Medical data acquisition for MBANS for indoor use within the patient's home	Not currently exempt from licensing.
5795 to 5815 MHz for TTT devices for road tolling applications	Already exempt from licensing.
76 to 77 GHz for TTT devices for obstacle detection systems for rotorcraft use	Already exempt from licensing.
122 to 122.25 GHz for Non-specific SRDs	Already exempt from licensing.
122.25 to 123 GHz for Non-specific SRDs	Already exempt from licensing.
40.66 to 40.7 MHz for Non-specific SRDs	Already exempt from licensing.

2.18 The Notice explained our proposal that, to implement the 2017 SRD Amendment Decision, we intended to update IR2030⁷ to include the provisions not already implemented in the

⁶ <http://www.ero-docdb.dk/Docs/doc98/official/pdf/REC7003E.PDF>

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/84970/ir-2030-july-2017.pdf

UK. As the SRD Decision now incorporates PMR446 and RFID devices, we also proposed to revoke the existing regulations contained in the 2003 Exemption Regulations and RFID Regulations. The technical provisions for PMR446 and RFID devices would be moved to IR2030. This would mean that we will therefore no longer require IR 2009⁸ and this would be withdrawn.

⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/84677/IR_2009.pdf

3. Comments received and Ofcom's response

The Notice

- 3.1 In accordance with sections 122(4) and 122(5) of the 2006 Act, the Notice, which we published on 20 November 2017, set out that we proposed to make the Regulations, their general effects and an address from which a copy of them could be obtained. It also included a copy of the draft Regulations and gave any person or party who wished to do so until 24 December 2017 to make representations.
- 3.2 As explained in Section 1, we received four sets of comments on the proposed Regulations all relating to mobile repeaters that will be addressed in a separate document.

Responses to the Notice

Implementing the 2017 SRD Amendment Decision

- 3.3 We received no comments on the drafting of the proposed Regulations in regard to implementing the EU Decision on SRDs. Therefore, we have decided to make the Regulations as proposed in this respect with one amendment.

Our decision

- 3.4 We have decided to make the Regulations in relation to SRDs largely as proposed, but the Regulations will not amend the PMR446 provisions as set out in the 2003 Exemption Regulations. The new provisions relating to PMR446 equipment introduced by the 2017 Amendment Decision will be in force.
- 3.5 Insofar as they relate to SRDs, the Regulations implement the 2017 SRD Amendment Decision. As such, the terms, provisions and limitations they contain are objectively justified. They go no further than is necessary to implement that decision and are therefore proportionate. They are not unduly discriminatory against particular persons or a particular description of persons in that they apply to all users of SRDs (and, indirectly, to all manufacturers and sellers). They are transparent in that their general effect was set out in the Notice and in this statement. In implementing the 2017 SRD Amendment Decision the Regulations are consistent with Ofcom's spectrum management duties.

4. General effect of the Regulations

- 4.1 We have summarised in Section 2 of this document the legal framework that is relevant to the Regulations, including our role in licence exempting the deployment of wireless telegraphy apparatus by making regulations under section 8(3) of the 2006 Act.
- 4.2 In this section, we set out the general effects of the Regulations as required by section 122(5) of the 2006 Act.

Extent of application

- 4.3 The Regulations apply in the United Kingdom, the Channel Islands and the Isle of Man.

Regulations

Overall general effect

- 4.4 The overall general effect of the Regulations is to implement the 2017 SRD Amendment Decision. They enable the establishment, installation and use of the relevant SRDs without the need for a licence under section 8 of the 2006 Act. They contain terms, provisions and limitations to which that licence exemption is subject. Devices that do not meet those terms, provisions and limitations do not fall within the exemption and their establishment, installation and use without a licence will continue to be a criminal offence.
- 4.5 Regulation 3(1) revokes the RFID Regulations (including the 2007 amendment).
- 4.6 Regulation 3(2) updates the reference date to IR 2030 outlined in regulation 5 of the 2010 Exemption Regulations, so that it refers to the latest version that includes the changes introduced by the 2017 SRD Amendment Decision.

A1. List of respondents

BT/EE

Vodafone

Quintel 2011

Name withheld