



Notice of Ofcom's proposal to
make a limitation order in
connection with the award of
800 MHz and 2.6 GHz

Consultation

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Closing Date for Responses: 14 December 2012

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Section 1

Notice

- 1.1 Ofcom will award wireless telegraphy licences for equipment operating within the following spectrum bands ("the Bands"): 791-821 MHz and 832-862 MHz (the "800 MHz band"); and 2500-2690 MHz (the "2.6 GHz band"). The process and rules for the award of licences to operate within the Bands are set out in the Wireless Telegraphy (Licence Award) Regulations 2012¹ ("the Award Regulations"), which were made on 9 November 2012 and come into force on 23 November 2012.²
- 1.2 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to the Bands for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Bands. Accordingly, under section 29 of the Wireless Telegraphy Act 2006, it must make an order. Ofcom proposes to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2012. A draft of the proposed order is set out at Annex 4.
- 1.3 The general effect of this order is set out at Section 2 of this document.
- 1.4 Subject to this consultation, Ofcom intends to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2012 so that it comes into force before the start of the bidding process set out in the Award Regulations. Ofcom has announced 11 December 2012 as the provisional date for the submission of applications by prospective bidders under the Award Regulations³. Ofcom will confirm the date once the Award Regulations have come into force.
- 1.5 A paper copy of the proposed order may be obtained from Robert Emson, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

¹ S.I. 2012/2817

² <http://stakeholders.ofcom.org.uk/consultations/notice-proposal-regulations/statement/>

³ <http://stakeholders.ofcom.org.uk/spectrum/spectrum-awards/awards-in-progress/>

Section 2

General effect of the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2012

The legislative framework

- 2.1 Under section 29(1) of the Wireless Telegraphy Act 2006 Ofcom may, if it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implemented Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the "Authorisation Directive") (2002/20/EC).
- 2.2 Under section 29(2) an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 2.3 Where Ofcom make an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to whom licences will be granted. Those criteria must be objectively justifiable, not unduly discriminatory, proportionate and transparent (section 29(4)).

The proposed regulations

- 2.4 A draft of the proposed order is set out at Annex 4.
- 2.5 In relation to the award of licences for the 800 MHz and 2.6 GHz bands, Ofcom will grant a limited number of licences, depending on the outcome of the award process to be held under the Award Regulations. In making the Award Regulations, Ofcom was required under section 14(3B) of the Wireless Telegraphy Act 2006 to satisfy itself that the criteria specified in the Award Regulations were objectively justifiable, not unduly discriminatory, proportionate and transparent.
- 2.6 The proposed order consequently provides that Ofcom will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedure set out in the Award Regulations.
- 2.7 The frequencies to which the draft order relates include all of the frequencies available in the award process as set out in Schedule 1 to the Award Regulations.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 14 December 2012.
- A1.2 Ofcom strongly prefers to receive responses using the online web form <http://stakeholders.ofcom.org.uk/consultations/notice-800mhz/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 2), 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 combined.award@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Ofcom
Mobile & Auction Team
3rd Floor
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 3. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

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/about/accoun/disclaimer/>

Next steps

A1.11 Following the end of the consultation period, Ofcom intends to make the order as soon as possible.

A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A1.13 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.

A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion.

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email: Graham.Howell@ofcom.org.uk

Annex 2

Consultation response cover sheet

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 3

Consultation question

Do you have any comments on the proposed order?

Annex 4

Draft Wireless Telegraphy (Limitation of Number of Licences) Order 2012

2012 No. [xxxx]

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Limitation of Number of Licences)
Order 2012**

Made - - - - [***]

Coming into force - - [***]

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 the 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 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, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2012 and shall come into force on [insert date].

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

Limitation of licences

2.—(1) OFCOM shall grant a limited number of wireless telegraphy licences for the use of the following frequency bands in the United Kingdom—

- (a) 791-821 MHz;
- (b) 832-862 MHz;
- (c) 2500-2690 MHz.

[Note for consultation: these frequency bands include all of the frequencies available in the award process as set out in Schedule 1 to the Wireless Telegraphy (Licence Award) Regulations 2012.]

(2) In determining the number of licences to be granted for the use of 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 2012(b).

[Signature]

[Date]

(a) 2006 c.36.
(b) S.I. 2012/2817.