

---

**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**

---

## About this document

---

On 24 January 2018 Ofcom published a statement of its decision to make regulations setting out the process and rules for the award of licences to operate within the 2350 to 2390 MHz and 3410 to 3600 MHz bands (The Auction Regulations).

This document complements the Auction Regulations and sets out Ofcom's decision to make two further statutory instruments in connection with the award of 2.3 and 3.4 GHz spectrum. These two statutory instruments have been submitted for registration and publication, and will come into force on 1 February 2018.

# 1. Ofcom's decisions

## Introduction

- 1.1 Ofcom is planning to award wireless telegraphy licences for equipment operating within the following spectrum bands: 2350 to 2390 MHz and 3410 to 3600 MHz (the "**Bands**").
- 1.2 In this regard, Ofcom recently published a statement of its decision to make regulations setting out the process and rules for the award of licences to operate within the Bands (the "**Auction Regulations**").
- 1.3 This Statement sets out Ofcom's decision to make two further statutory instruments in connection with this award. These are, respectively:
  - a) The Wireless Telegraphy (Limitation of Number of Licences) Order 2018, which limits 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 (the "**Limitation Order**"); and
  - b) The Wireless Telegraphy (Register) (Amendment) Regulations 2018, which amend the Wireless Telegraphy (Register) Regulations 2012 to allow for the publication by Ofcom of certain information relating to the licences awarded pursuant to the Auction Regulations (the "**Register Amendment Regulations**").

## Notice of Ofcom's proposal

- 1.4 On 19 December 2016, Ofcom published a notice of its proposals to make the Limitation Order and the Register Amendment Regulations (the "**December 2016 Consultation**"). The Notice contained draft regulations and invited comments on these by 30 January 2017.
- 1.5 Ofcom received no responses to the December 2016 Consultation.

## Making and publication of the final regulations

- 1.6 Ofcom has decided to make the Limitation Order and Register Amendment Regulations on 25 January 2018. These statutory instruments are unchanged from those on which Ofcom consulted in the December 2016 Consultation.
- 1.7 These are available on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website. Copies in draft form are also annexed to this statement for indicative purposes in the form submitted for registration and publication after their making by Ofcom. [www.legislation.gov.uk](http://www.legislation.gov.uk) is the only authorised source for published statutory instruments.
- 1.8 Section 2 contains copies of the Regulatory Impact Assessments for the two statutory instruments in the form placed in the libraries of both Houses of Parliament.

**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**

- 1.9 Annex 1 contains draft copies of the two statutory instruments in the form submitted for registration and publication after they were made.

## 2. Regulatory Impact Assessment – Limitation Order

### Introduction

- 2.1 The analysis set out in this document represents a Regulatory Impact Assessment (“**RIA**”) following Ofcom’s notice of proposals to make the Limitation Order, published on 19 December 2016.
- 2.2 Regulatory Impact Assessments 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 other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

### Proposal, purpose and intended effect

- 2.3 Following statements published on 26 May 2015<sup>1</sup>, 26 October 2015<sup>2</sup>, 11 July 2017<sup>3</sup> setting out Ofcom’s decision on a number of issues connected with the award of the Bands, Ofcom has decided to award licences for these bands by means of an auction.
- 2.4 The Auction Regulations<sup>4</sup>, which were published on 24 January 2018, set out the rules and procedures that Ofcom will apply in that auction. This document will complement the Auction Regulations.
- 2.5 In particular, the Limitation Order is intended to allow Ofcom to limit the number of users of the Bands through the award of licences, as opposed to exempting from licensing the use of radio equipment in the Bands and so allowing an unlimited number of users. The purpose of limiting the number of users in this way is to secure an efficient use of the electro-magnetic spectrum and efficient use, in particular, of the Bands.
- 2.6 The Limitation Order provides that, in determining the number of licences to be granted for the use of frequencies in the Bands and the persons to whom the licences will be granted, Ofcom shall apply the procedure set out in the Auction Regulations.

---

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/statement/statement.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/statement/pssr-statement.pdf>

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf)

<sup>4</sup> The Regulations are published on legislation.gov.uk.

## Costs for Ofcom to consider

- 2.7 The costs to Ofcom of limiting the number of licences in the 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 Bands. The administrative costs of the award will be small in relation to the benefit generated to the economy and the award process is unlikely to have a negative financial impact.
- 2.8 There are costs of clearing the 2.3 GHz and 3.4 GHz bands of previous MOD use. However, in comparison with the likely consumer benefits of high speed mobile broadband services (which are the services most likely to be provided using this spectrum), we consider the costs are relatively small.
- 2.9 In comparison, licence exemption would mean that Ofcom would not incur auction costs. However, as discussed in the following section, 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 Bands.

## Cost to business, including small business and the voluntary sector

- 2.10 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 Bands are high-speed mobile broadband services.
- 2.11 Other business sectors are likely to benefit from a more efficient supply of communications services as a result of this decision.
- 2.12 The decision to license the 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 the Bands were licence-exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users coordinated with each other. Ofcom’s technical research has shown that this would impose large costs due to interference between users. These costs would generally outweigh the benefit of licence exemption.
- 2.13 Ofcom considers that the relative costs imposed on business by limiting the number of licences in the Bands are lower than the costs of making use of the spectrum licence exempt.
- 2.14 Ofcom does not consider that its decision to make the Limitation Order will have any material implications for the voluntary sector.

## Conclusion

- 2.15 Ofcom has assessed the impact of limiting or not limiting the number of licences in the 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 Bands in accordance with the Auction Regulations.

## Declaration

I have read the 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: 25 January 2018**

Contact point:

John Glover  
Spectrum Group  
The Office of Communications Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Telephone: 020 7981 3878 Email: [john.glover@ofcom.org.uk](mailto:john.glover@ofcom.org.uk)

## 3. Regulatory Impact Assessment – Register Amendment Regulations

### Introduction

- 3.1 The analysis set out in this document represents a Regulatory Impact Assessment (“**RIA**”) following Ofcom’s notice of proposals to make the Register Amendment Regulations, published on 19 December 2016.
- 3.2 Regulatory Impact Assessments 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 other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

### Proposal, purpose and intended effect

- 3.3 Following statements published on 26 May 2015<sup>5</sup>, 26 October 2015<sup>6</sup>, 11 July 2017<sup>7</sup> setting out Ofcom’s decision on a number of issues connected with the award of the Bands, Ofcom has decided to award licences for these bands by means of an auction.
- 3.4 The Auction Regulations<sup>8</sup>, which were published on 24 January 2018, set out the rules and procedures that Ofcom will apply in that auction. **This document will complement the Auction Regulations.**
- 3.5 In particular, the Register Amendment Regulations to which this RIA relates adds a category of licences (those to be awarded under the Auction Regulations) to those listed under the Wireless Telegraphy (Register) Regulations 2012<sup>9</sup> (the “**2012 Register Regulations**”).<sup>10</sup> The 2012 Register Regulations provide that Ofcom shall establish and maintain a public register of relevant information to which those regulations apply.
- 3.6 The purpose of this register is to support the spectrum transfer process by providing basic information about allocated spectrum to the market (such as, for example, the names and contact details of licensees, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation). By including the Bands in the 2012

---

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/statement/statement.pdf>

<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/statement/pssr-statement.pdf>

<sup>7</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf)

<sup>8</sup> The Regulations are published on legislation.gov.uk.

<sup>9</sup> S.I. 2012/2186

<sup>10</sup> These are available at [www.legislation.gov.uk](http://www.legislation.gov.uk).

Register Regulations, Ofcom is therefore extending its ability to publish certain information necessary to support the transfer process in respect of frequencies in the Bands.

## Costs for Ofcom to consider

- 3.7 Ofcom carried out a RIA for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register<sup>11</sup>. Those regulations were subsequently amended on several occasions, and were replaced in 2012 with the 2012 Register Regulations, a consolidating set of regulations, for which Ofcom also carried out a RIA (published September 2012).<sup>12</sup>
- 3.8 The Register Amendment Regulations which are the subject of this RIA have the effect of amending the 2012 Register Regulations by adding the Bands to the Schedule of the 2012 Register Regulations.
- 3.9 The conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 and the RIA for the 2012 Register Regulations on the costs and benefits of establishing a register also apply to these regulations. In summary, those conclusions were that the benefits of having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the Register Amendment Regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and would be limited to updating the register for the wireless telegraphy licences in the Bands. The RIA for the Wireless Telegraphy (Register) Regulations 2004 also noted that if a register were not established, there would be a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher and that commercial providers might not bring the same benefits as an independent register.
- 3.10 Moreover, now that the register has been set up, the additional costs of including the Bands within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

## Cost to business, including small business and the voluntary sector

- 3.11 The business sector most likely to be affected by the Register Amendment Regulations is the mobile communications service provision sector. The types of service most likely to be provided using frequencies in the 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.

---

<sup>11</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/spt\\_wtr/statement/stwtr.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/spt_wtr/statement/stwtr.pdf)

<sup>12</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-trading/statement/TradingRegister\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-trading/statement/TradingRegister_statement.pdf)

- 3.13 Ofcom considers that the costs for business associated with the Register Amendment Regulations are likely to be negligible (and may, indeed, be zero). As explained above, the main costs associated with including information in connection with the Bands in Ofcom's publicly-available register will fall upon Ofcom (although these are likely to be relatively small in any event).
- 3.14 Ofcom does not consider that its decision to make the Register Amendment Regulations will have any material implications for the voluntary sector.

## Conclusion

- 3.15 Ofcom has assessed the impact of amending or not amending the 2012 Register Regulations so as to include information about frequencies in the Bands in its publicly-available register. We have concluded that the benefits of amending the 2012 Register Regulations (in terms of supporting the spectrum transfer process and, as a result, the efficient and optimal use of spectrum) far outweigh the relatively small costs of doing so. Accordingly, the 2012 Register Regulations will be amended to add the relevant frequencies.

## Declaration

**I have read the 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: 25 January 2018**

Contact point:

John Glover  
Spectrum Group  
The Office of Communications Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

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

Telephone: 020 7981 3878 Email: [john.glover@ofcom.org.uk](mailto:john.glover@ofcom.org.uk)

# A1. Draft statutory instruments – Limitation Order

---

## STATUTORY INSTRUMENTS

---

2018 No.

### ELECTRONIC COMMUNICATIONS

#### The Wireless Telegraphy (Limitation of Number of Licences) Order 2018

*Made* - - - - - XXXX 2018

*Coming into force* - - - - - XXXX 2018

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by sections 29(1) to (3) of the Wireless Telegraphy Act 2006<sup>(13)</sup> (the “Act”).

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, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2018 and shall come into force on XXXX 2018.

(2) This Order shall not extend to the Channel Islands or to 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 radio frequencies in the following frequency bands in the United Kingdom—

- (a) 2350 to 2390 megahertz; and
- (b) 3410 to 3600 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 2018<sup>(14)</sup>.

---

<sup>(13)</sup> 2006 c.36.

<sup>(14)</sup> S.I. 2018/XXXX

XXXX 2018

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

### **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 these Regulations will have on the costs to business is available to the public from the Office of Communication’s (“OFCOM”) 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](http://www.ofcom.org.uk). Copies of this assessment have also been placed in the library of the House of Commons.

## A2. Draft statutory instruments – Register Amendment Regulations

---

### STATUTORY INSTRUMENTS

---

2018 No.

### ELECTRONIC COMMUNICATIONS

### The Wireless Telegraphy (Register) (Amendment) Regulations 2018

*Made* - - - - - XXXX 2018

*Coming into force* - - - - - XXXX 2018

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006<sup>(15)</sup> (the “Act”).

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

**3.—**(1) These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) Regulations 2018 and shall come into force on XXXX 2018.

#### Amendment of the Wireless Telegraphy (Register) Regulations 2012

**4.** IN Column 2 of Part 2 of Schedule 2 to the Wireless Telegraphy (Register) Regulations 2012<sup>(16)</sup>—

- (a) between “1785-1805 MHz” and “2500-2690 MHz”, insert “2350-2390 MHz”;
- (b) for “3480-3500 MHz”, substitute “3410-3600 MHz”; and
- (c) delete “3580-3600 MHz”.

XXXX 2018

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

---

<sup>(15)</sup> 2006 c.36.

<sup>(16)</sup> S.I. 2012/2186, amended by S.I. 2103/640 and S.I 2015/1400.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Wireless Telegraphy (Register) Regulations 2012 (S.I. 2012/2186, amended by S.I. 2013/640 and S.I. 2015/1400), which require the Office of Communications (“OFCOM”) to establish and maintain a public register of relevant information relating to certain classes of wireless telegraphy licences and grants of recognised spectrum access.

These Regulations add licences in respect of wireless telegraphy stations operating within certain frequency bands.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from the Office of Communication’s (“OFCOM”) 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](http://www.ofcom.org.uk). Copies of this assessment have also been placed in the library of the House of Commons.