



Regulatory Impact Assessment  
for the Wireless Telegraphy  
(Licence Charges) (Amendment)  
Regulations 2016

Issued:

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## Section 1

# Regulatory Impact Assessment

## Introduction

- 1.1 Ofcom acts in accordance with Government practice that, where a statutory regulation is made, a Regulatory Impact Assessment ('RIA') must be undertaken. We also comply with our duty under section 7 of the Communications Act 2003 ("the 2003 Act") to undertake impact assessments.
- 1.2 The analysis in this document is a regulatory impact assessment relating to the Wireless Telegraphy (Licence charges) (Amendment) Regulations 2016 (the "Regulations"). It is consistent with the Government practice on RIAs and Ofcom's duty under the 2003 Act.
- 1.3 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. This is reflected in section 7 of the 2003 Act, which imposes a duty on Ofcom to carry out impact assessments where our decisions would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. As a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website: [http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf).
- 1.4 On 8 April 2016, we published a consultation document entitled "*Notice of proposals to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016*" (the "Notice")<sup>1</sup> and carried out an impact assessment (Annex 5), inviting comments from stakeholders. Ofcom has not received any comment in relation to the impact assessment. This RIA is in all material respects the same as that on which we consulted stakeholders.

## Background

- 1.5 This RIA relates to our decision to update the regulations that prescribe charges for wireless telegraphy licences. We have made Regulations that amend the Wireless Telegraphy (Licence Charges) Regulations 2011 (SI 2011/1128)<sup>2</sup> (the "2011 Regulations"). The Regulations maintain a number of the charges prescribed by the 2011 Regulations, but also create new charges and amend a number of existing charges.
- 1.6 Under section 12 of the WT Act, Ofcom may prescribe in regulations the sums payable in respect of wireless telegraphy licences other than those awarded by auction. This power enables us to recover the cost of administering and managing WT Act licences. Section 13 of the WT Act permits us to recover sums greater than those we incur in performing our spectrum management functions (this is termed Administrative Incentive Pricing), to reflect a range of spectrum management objectives. In particular, in order to provide incentives for licensees to use their

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-fees-notice-2016/summary/2016-wireless-telegraphy-fees-notice.pdf>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2011/1128/made/data.pdf>

spectrum more efficiently. This goes to discharging our duties under section 3 of the WT Act.

## Our Decision

### 1.7 The Regulations:

- i) implement the fifth and final phase of a five year programme of fee changes for some Aeronautical Station licence classes;
- ii) increase the level of cost-based fees payable for Local Television DTT Multiplex, to implement the final phase of fees for the broadcasting licence class;
- iii) introduce fees for the Manually Configurable White Space Devices (MCWSDs);
- iv) introduce cost-based fees for the new licence product Spectrum Access Offshore Mobile; and
- v) amend regulation 4 of 2011 Regulations to permit licensees of Spectrum Access 28 GHz licences to have prescribed payment intervals for fees in excess of £100,000.

### 1.8 We have previously consulted, and made decisions, on the policy behind most of our fee changes in the following documents (which include full impact assessments where relevant and appropriate):

- our consultation document, "*Applying spectrum pricing to the Aeronautical sector, a second consultation*"<sup>3</sup> (the "December 2009 Consultation") published December 2009;
- our statement of December 2010 "*Fees for aeronautical radio licences, a statement*"<sup>4</sup> (the "December 2010 Statement");
- our consultation, "*Bespoke licence fees for aeronautical VHF communications frequencies, a further consultation*"<sup>5</sup> published on March 2011 (the "March 2011 Consultation");
- our statement of June 2011, "*Bespoke licence fees for aeronautical VHF communications frequencies, a statement*"<sup>6</sup> (the "June 2011 Statement");
- our consultation of September 2013, "*Spectrum Pricing: A framework for setting cost-based fees*"<sup>7</sup> (the "Spectrum Pricing Consultation");
- our statement of 17 March 2014, "*Spectrum Pricing: A framework for setting cost-based fees*"<sup>8</sup> (the "Spectrum Pricing Statement");

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<sup>3</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum\\_pricing/summary/aip2.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/summary/aip2.pdf)

<sup>4</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum\\_pricing/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/statement/statement.pdf)

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/summary/condoc.pdf>

<sup>6</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf)

<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/summary/condoc.pdf>

<sup>8</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/statement/CBFstatement.pdf>

- our consultation of 27 February 2015 “*Manually configurable white space devices: Consultation on the licensing of manually configurable white space devices operating in the UHF TV band*”<sup>9</sup> (the “MCWSDs Statement”;
- our statement of 25 September 2015 “*Licensing manually configurable white space devices*”<sup>10</sup>(the MCWSDs Statement).

## The citizen and/or consumer interest

1.9 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and to further the interests 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. In deciding to make changes we have considered the wider impact beyond immediate stakeholders in the radiocommunications community. In particular, Ofcom considers that the decisions which underpin the changes introduced by the Regulation will be of benefit to consumers for the following reasons:

- i) The continued use of Administered Incentive Pricing (AIP), in the circumstances where we have decided to apply AIP, will encourage more efficient use of the radio spectrum. This will enable consumers to continue to benefit from advances in technology and the new services they may offer.
- ii) It is appropriate to charge cost-based fees in circumstances where spectrum is not scarce (and therefore it is not appropriate to apply AIP), or where fees based on the opportunity cost of the spectrum would be lower than the relevant costs incurred in managing the spectrum. Therefore, the costs of managing spectrum used for broadcasting would be borne by broadcasters benefitting from use of the spectrum so that other users of this spectrum do not pay a disproportionate share of management costs.
- iii) The decision to introduce a transitional licensing regime for use of MCWSDs while equipment is being developed that is capable of meeting our licence exemption regulations enables the deployment of WSDs to begin sooner in the UK. In these circumstances we believe it is appropriate to set a cost-based fee. The introduction of a transitional licensing regime for the use of MCWSDs benefits citizens and consumers earlier than would otherwise be the case. It also means that two different categories of WSDs can operate alongside one another if equipment capable of meeting the terms of our licence exemption is developed sooner than anticipated. Consequently, the development of the opportunities brought about by the implementation of the TV white space framework could be exploited through a broader range of devices.
- iv) Previously access to spectrum for offshore use in spectrum used for mobile services, but not covered by a licensed operator’s licence, had been permitted but was licensed on a bespoke one-off basis. The decision to make the Spectrum Access Offshore Mobile licence provides stakeholders with information to enable

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<sup>9</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/summary/manually-configurable-wsds.pdf>

<sup>10</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/summary/manually-configurable-wsds.pdf>

them to access frequency bands and new technologies such as WiMAX (Worldwide Interoperability for Microwave Access) and LTE (Long Term Evolution) for use by the offshore industries given the restrictions in the licence we believe that it is appropriate to set a cost-based fee. We did not consider it appropriate to charge fees on an AIP basis, particularly as other users will not be denied access to the spectrum.

- v) The decision to permit staged payments for Spectrum Access 28 GHz allows licensees who fall within criteria set in regulations 4(6), 4(7) and 4(8) to be able to spread the cost of their licence(s) over ten instalments.

## Ofcom's policy objective

1.10 We have a number of duties under section 3 of the Wireless Telegraphy Act 2006 (the "WT Act"). These include having regard when carrying out our radio spectrum functions to:

- i) the extent that spectrum is available for use; and
- ii) the desirability of promoting the efficient management and use of the spectrum for wireless telegraphy.

1.11 Section 12 of the WT Act permits Ofcom to prescribe in regulations the sums payable in respect of wireless telegraphy licences other than those awarded by auction.

## Options considered

1.12 Having made the relevant policy decisions in the documents referred to in paragraph 1.8 above, the principal options open to us in connection with the Regulations were:

- i) to make the Regulations that introduced new fees for certain licence classes and change others; or
- ii) to do nothing (not making the Regulations and maintaining the fees in the 2011 Regulations as amended).

## Analysis of the different options

1.13 The following assesses the impact of options open to us by reference to the principal changes that were made by the Regulations.

### Make Regulations

1.14 The changes introduced by the Regulations apply to all persons applying for a WT Act licence in one of the applicable licence classes, including both domestic and overseas applicants. The Regulations bring important benefits to those persons, particularly in terms of increased transparency and legal certainty.

### Aeronautical licence classes

*The benefits of AIP based fees for certain aeronautical licence classes.*

1.15 Where the supply of spectrum is sufficient to meet demand, without recourse to prescriptive command and control of assignments, there is little to be gained in

efficiency terms from setting fees other than to recover some or all of our relevant administrative costs. However, where there is excess demand for spectrum, we believe the cost to others and to the wider UK economy should be recognised by the current users so that they can make appropriate decisions. AIP based licence fees are intended to achieve this outcome.

- 1.16 There is excess demand for these frequencies from within the aeronautical sector and it is often very difficult to meet new requests for aeronautical VHF frequencies required by aerodromes and air traffic controllers. Europe is reviewing a number of measures to alleviate VHF congestion, including an extension of the use of narrower 8.33 kHz channels at additional flight levels. However, in our view it is too early to conclude that these measures will result in additional capacity such that use of aeronautical frequencies no longer has an associated opportunity cost.
- 1.17 We recognise that there are operational and regulatory constraints on the ability of spectrum users to respond to fees by using spectrum more efficiently in the short term. However, we consider that there is scope to respond in the long term, even if a change of spectrum use necessitates significant changes to the way operations are conducted or changes to the services provided in some cases.
- 1.18 There is also potential excess demand from other sectors of the economy which face shortages of spectrum which could be overcome if spectrum currently used by the aeronautical sector were made available to them. We recognise that it is not feasible to use aeronautical VHF communications frequencies for other applications today as this is likely to cause unacceptable interference with the current applications, in contravention of the UK's obligations under international treaties. Whether this situation might change in future, and in what timeframe, is unclear. In determining the appropriate level of fees, therefore, no account has been taken of potential use of these frequencies by other sectors of the UK economy.
- 1.19 In conclusion, we consider that licence fees based on opportunity costs help to manage excess demand for these frequencies, and promote efficiency improvements where possible, making it more likely that those who provide spectrum dependent services which are highly valued by UK citizens and consumers will have access to the frequencies which they need to deliver those services. We conclude that this will generate net benefits for UK citizens and consumers.
- 1.20 We have phased-in fee increases to mitigate the transitional financial impacts that specific licensees may experience. This should reduce risks of inefficient responses to the new fees, including from smaller organisations which proportionately may be more affected. A phased introduction of fees enables us to identify the impacts of incremental changes for particular operators prior to full fees applying. By gradually introducing fees over time, this ensures that we can respond quickly, as and when appropriate, during this period.
- 1.21 Our analysis explicitly recognises the critical importance of safety in the aeronautical sector and the relevant duties of the Civil Aviation Authority (CAA) as safety regulator. Where services which are provided using spectrum support the provision of public goods, the appropriate policy interventions to maximise such social value, or minimise social dis-benefits, take the form of targeted subsidies and taxes for the outputs concerned, or direct regulation, rather than subsidies for the required inputs (including spectrum). The CAA has confirmed that it has adequate powers to respond to any safety concerns arising from Ofcom's decision to apply AIP to the aeronautical sector, and that the adequacy of VHF communications provision will be subject to safety regulation by the CAA using appropriate regulatory instruments taking into

account safety justification provided by the service providers via, for example, safety cases.

### *The incremental benefits of bespoke pricing compared with generic pricing*

- 1.22 The objective of applying bespoke pricing, instead of generic pricing, to some types of aeronautical radio licences, is to provide more effective incentives for licensees to use spectrum efficiently. The more closely charges reflect opportunity costs, the larger the gains from more efficient usage are likely to be. Generic fees cause spectrum users to review the volume of each assignment type that they require, potentially releasing frequencies for other aeronautical users who place a higher value on that resource. However bespoke fees which vary according to the geographic impact of different assignments can provide additional incentives for licensees to consider using the minimum Designated Operational Coverage (DOC) consistent with their operational and regulatory requirements, thereby potentially releasing spectrum for other aeronautical users, and making it easier over time for the CAA to accommodate current and future demand for assignments.
- 1.23 Bespoke pricing may also have the advantage over generic pricing in so far as it may help to ensure that some users may decide to continue using spectrum which, otherwise, at generic prices, they would have given up, rationally (in response to the price set) but inefficiently (in relation to the value they derive from the use).
- 1.24 We recognise that bespoke pricing may be more complex and costly to administer than generic pricing. We forecast that most of the additional costs will take the form of one-off up-front costs incurred in implementing the IS system needed to calculate bespoke fees. We estimate that the ongoing costs of generic and bespoke pricing will be similar as licence records would need to be maintained and invoices generated under either arrangement.
- 1.25 In the light of this analysis, we conclude that the cost of implementing and operating bespoke pricing for some licence classes is outweighed by the benefits in terms of more efficient use of scarce frequencies.

### *Impacts on different types of stakeholders*

- 1.26 As set out in the December 2010 and June 2011 statements, we took care to review the distribution of financial impacts of the fee changes on different types of licensees. We considered that the impact of imposing AIP based licence fees for VHF on aviation users would fall on a wide variety of users. We expected the impact on the industry as a whole to be an increase of about £3.5m per year at the end of the five years during which increases are phased in. (The precise amount will depend on how licensees respond to pricing signals).
- 1.27 Other impacts fall on a wide range of different types of licensee including airlines, aeronautical clubs, flying schools, private individuals, oil companies operating offshore installations, and research establishments. In our analysis of impacts of our overall fees policy we assumed that the great majority of licensees holding Air/Ground and Aerodrome Flight Information Service (AFIS) assignments which would attract a bespoke fee of £3350 would opt to reduce their DOC and reduce the fee to £650.
- 1.28 We phased-in fee increases to mitigate the transitional financial impacts that specific licensees may experience. We concluded that we should implement a phasing scheme where fee increases are relatively small in the early years and

proportionately greater in the later years. We concluded that this was appropriate because it was in the early years that uncertainty about scope to respond in a manner consistent with safe and efficient operation would be greatest. Our intention is to reduce the risk of inefficient responses to the new fees, including from the smaller organisations which are proportionately more affected.

### Local Television DTT Multiplex

- 1.29 Local TV broadcasting and licensing policy was still in development during 2011/12. In light of this, we were not able to use 2011/12 spectrum management costs, as these were not representative to base the fees for the local TV multiplex.
- 1.30 As a result, we classified costs using a bottom-up approach, based on the forecast number of spectrum management full time equivalents (FTEs) we expected would be required to manage local TV on an on-going basis. We extrapolated other costs from the national DTT multiplex costs for 2011/12 based on this forecast number of FTEs. Spectrum engineering and enforcement (SE&E) costs (involving WT Act licensing, the investigation of harmful interference and undertaking enforcement action) are calculated as a proportion of national DTT SE&E costs based on the ratio of national DTT main transmitter sites<sup>11</sup> from which local TV would be broadcast (around 25% of transmitters). As a secondary user of spectrum, we recognised that international spectrum costs were unlikely to be relevant for local TV so none of the associated costs have been apportioned to local TV.
- 1.31 By applying our cost allocation methodology, we identified spectrum management costs for the local TV DTT multiplex of £23,900 in 2011/12.
- 1.32 We then considered how our spectrum management costs for the local TV DTT multiplex have been formulated in comparison to other sectors under the cost allocation methodology. We sought to extrapolate costs as accurately as possible based on our understanding of the spectrum management needs of the sector.
- 1.33 We also noted the Government's support for a new tier of local television services in the UK. It laid statutory instruments before Parliament and directed Ofcom to reserve spectrum in pursuit of this objective. The licensing framework for local TV services became operational in 2013. It was evident from these developments that the Government's support for local TV would continue after the multiplex had been launched.
- 1.34 Therefore while our underlying rationale to apply cost-based spectrum fees remained pertinent (and applicable) to the local TV DTT multiplex, we also wanted to ensure that these wider Government objectives were not at risk of being unduly undermined by our fees.
- 1.35 As a result, we considered whether an adjustment to the spectrum fee might be justified in light of this policy context, and determined this not to be the case for the following reasons:
- Part of the Government's rationale for intervention in the provision of local TV was the compelling evidence of relevant market failures acting as a barrier for

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<sup>11</sup> We adopted this approach because our interference role for broadcasting differs in comparison to other sectors. This is because the BBC has a duty to investigate complaints of interference to domestic television and radio reception and our involvement is typically limited to cases where interference concerns are escalated.

local TV business models to develop in the existing media market. DCMS concluded that there was a need to address the identified barriers if the development of sustainable local TV was to occur<sup>12</sup>. To this end, a range of measures were put into place by DCMS, Ofcom and the BBC to support local TV<sup>13</sup>.

- We do not believe that our decision would undermine the Government's objectives for local TV, and therefore we do not consider that a long term reduction in the spectrum fee from a level which fully reflects our spectrum management costs is necessary or justified on the basis of the Government's wider policy. We noted that the fee was likely to be relatively low compared to the other costs incurred by a multiplex operator<sup>14</sup>.
- We have not identified any considerations relevant to our wider duties which justify an adjustment of the level of fees levied on the local TV multiplex operator, nor are we aware of any particular group of citizens or consumers who would be unfairly and adversely affected by fee levels that reflect our costs, as per our equality impact assessment.

1.36 In addition, we recognised that local TV services were relatively new, and the licence awarded to Comux UK did not formally commence until November 2013. We therefore decided that introducing fees in this context could risk unduly undermining the wider policy objectives in the short term. In particular, we noted that some of Comux UK's services would have only launched operationally at the point at which fees were introduced.

1.37 We considered it appropriate to allow Comux UK a period of adjustment. We decided to phase in the introduction of fees during an initial two year period beginning in 2014 with the initial roll-out of local TV services. We considered this a sufficient period to manage the risk identified.

1.38 We decided to set the fee for the local TV multiplex at a level which (we estimated) reflects our spectrum management costs in full (and at the full unit cost). We decided to phase in the introduction of the fee in recognition of the award of the licence and future rollout of services.

1.39 The cost-based fee is £23,900 pa, though we decided to set it at a contribution to our costs (50%) for the first two years (in 2014 and 2015 the fee was £11,950 pa). We decided that the full fee of £23,900 pa would apply from 2016.

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<sup>12</sup> See, for example, *a new framework for local TV in the UK*, July 2011, DCMS.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/72920/Local-TV-Framework\\_July2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72920/Local-TV-Framework_July2011.pdf)

<sup>13</sup> These include funding of up to £40m which the BBC has made available to support the development of the multiplex and support new local news content

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/local\\_television/funding\\_arrangements.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/local_television/funding_arrangements.pdf).

<sup>14</sup> As with the national DTT multiplex operators, there are a range of significant costs associated with running a local TV multiplex. See, for example [http://www.arqiva.com/documentation/reference-offers/local-dtt-reference-offers/LDTPS%20Transmission%20Reference%20Offer%20\(Version%203\).pdf](http://www.arqiva.com/documentation/reference-offers/local-dtt-reference-offers/LDTPS%20Transmission%20Reference%20Offer%20(Version%203).pdf)

## Manually Configurable White Space Devices (MCWSDs)

- 1.40 Following on from our decision, as set out in the “*Licensing manually configurable white space devices*”<sup>15</sup> (the “MCWSDs statement”), we decided to licence devices that do not operate automatically and instead require an element of manual configuration by an installer to operate in the UHF TV band (470 to 790 MHz).
- 1.41 This is to be on a transitional basis while equipment is being developed that is capable of meeting our licence exemption regulations as set out in our TV White Space (TVWS) Framework Statement<sup>16</sup> of 12 February 2015. We therefore decided to proceed with arrangements to implement licensing of MCWSDs on a transitional basis at the set fee of £1,500 per annum.
- 1.42 Noting and taking into account the requirement raised by stakeholders, we considered a tiered system for the fee but decided that it was too early to set up a real cost-based tiered system as there was too much uncertainty around the actual costs we would incur in administering the licensing regime.
- 1.43 We also considered whether it would have been possible to adopt a fee below cost to encourage innovation. However, while we believe that encouraging innovation in the use of TVWS is important, we concluded that if we were to set a fee below our expected costs to encourage increased take up of licensed MCWSDs, there would be a risk that it would have the unintended and undesired effect of dis-incentivising the development of licence-exempt WSDs.
- 1.44 We therefore determined that it was appropriate to set the fee at a level that would allow us to recover an appropriate amount of our costs in administering the licensing regime.

### *Costs of investigation and interference management*

- 1.45 There are a number of costs associated with applying the MCWSDs product. These include the training and allocation of staff to administer licences on an ongoing basis and ensure data on licensees are kept up-to-date. Ofcom is likely to incur cost for spectrum management and interference management activities, such as investigation of harmful interference, enforcement and prosecution costs.
- 1.46 However, we expect MCWSDs to operate on a non-interference non-protection basis. This means that the equipment must not cause harmful interference to any other authorised services and that no protection will be given from harmful interference received from other authorised services. Therefore, Ofcom would expect there to be only minimal costs in addressing interference experienced by MCWSDs.
- 1.47 We recognise that the costs of managing interference could increase substantially if there were large numbers of manually configurable devices in use and if end users were frequently misconfiguring equipment. We also recognise the need to mitigate the increased probability of MCWSDs causing interference to incumbent users of the UHF TV band since MCWSDs licensees can deploy as many white space devices as they wish in any part of the UK using manual configuration.

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<sup>15</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/statement/Licensing\\_manually\\_configurable\\_white\\_space\\_devices.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/statement/Licensing_manually_configurable_white_space_devices.pdf)

<sup>16</sup> “*Implementing TV white spaces: Statement*”, <http://stakeholders.ofcom.org.uk/binaries/consultations/white-space-coexistence/statement/tvws-statement.pdf>

- 1.48 In practice however, we consider that this risk is low. Configuring MCWSDs requires technical expertise and it will normally need to be done by a professional installer. This in itself should limit the possibility of accidental misconfiguration. The fact that MCWSDs are only likely to be suitable for professional use and that we intend to issue licences on a transitional basis only (i.e. for a limited period of time), also means that we would not expect very large numbers of MCWSDs.
- 1.49 Notwithstanding, we introduced licence conditions, both technical and non-technical, which we consider would be appropriate in order to ensure a low probability of MCWSDs causing harmful interference to DTT and PMSE services. Our licence conditions include a requirement for licensees to have a Quality Assurance (QA) process in place to ensure MCWSDs deployed under the licence are correctly configured and a requirement for licensees to send Ofcom a record of the installation of every MCWSD they make under the licence.
- 1.50 Ofcom incurs extra administration costs as a result of these licence conditions, for example, by assessing licensees' QA processes, carrying out physical inspections of licensees' deployments of MCWSDs and inspecting records of installation. Some additional costs including spectrum and interference management activities to some extent, such as investigation of harmful interference, enforcement and prosecution costs will be greater than those associated with our licence exemption. However, we anticipate that the incremental costs of Ofcom's interference management activities for the licensing regime will be limited as we expect that in general we could use the same systems and processes to manage the potential for interference to be caused by MCWSDs as can be used for other WSDs.
- 1.51 We do not expect the costs of creating and maintaining a new licence product to be overly burdensome for Ofcom. We continue to believe that, on balance, the potential benefits of allowing MCWSDs to operate under a transitional regime outweigh the potential costs and risks.

#### *Costs of compliance for industry*

- 1.52 The requirement to obtain a licence to enable deployment of MCWSDs imposes some costs on the operators of such equipment in that they have to spend time on obtaining the licence and complying with its terms, and pay a fee. Licensees will also likely incur some costs related to setting up and complying with our licence conditions, in particular the QA process and the record-keeping for each installation of a MCWSD. However, we consider that this does not represent a disproportionate burden on industry in terms of obtaining the licence or ongoing compliance costs. We would expect installers of MCWSDs to keep records of installation as part of best business practice regardless of our licence conditions and therefore do not consider our record-keeping requirements to represent a significant additional cost for industry.
- 1.53 Consequently, we decided to set the licence fee at £1,500 based on our estimates of the likely costs for administering the licensing regime. However, if we considered there was a significant misalignment with costs in the future, we would expect to review the fee. We currently anticipate that we would do this as part of the review of the MCWSD licensing regime.

#### Spectrum Access Offshore Mobile

- 1.54 On occasion we receive requests for access to spectrum used for mobile services in areas not covered by a network operator licence, this is mainly for offshore use by

windfarms and oil rigs outside of the 12 nautical mile limit. These are outside of the territorial seas included in many of the current licences issued to mobile network operators. Previously these licences were issued on a bespoke one-off basis. However with the upcoming award of the 2.3 GHz and 3.4 GHz bands, where the use of the spectrum offshore is not covered under the territorial extent of the licences, and the increasing number of requests to access the spectrum we believe that a standardised licence product is needed.

- 1.55 The fee of £5000 payable every five years was based on similar cost-based licences that we issue for the Isle of Man and Channel Islands. The fee is cost-based and is in line with the policy set out in our framework "*Spectrum Pricing: A framework for cost-based fees*" which we published on 17 March 2014<sup>17</sup>. Given the restricted non-protected nature of the licences we do not believe that a fee based on AIP is appropriate.
- 1.56 We do not expect this cost would prove to be a barrier to operators wishing to access the spectrum. We have already issued licences on this basis and are in discussions with other operators. We believe that the creation of the new licence and the visibility of the product, including inclusion in the 2011 Regulations, may provide administrative savings to stakeholders and reduce the time taken in order to apply for and process a licence.
- 1.57 Although Ofcom will incur some costs in creating and maintaining this new licence product this is likely to be less than the current process of creating bespoke one-off licences.

### Spectrum Access 28 GHz

- 1.58 Ofcom's policy objective in setting the fees for Spectrum Access 28 GHz licences was to set a fee level that provides appropriate incentives for efficient use of spectrum of licences once they came to the end of their initial award period which is consistent with the approach we have taken towards other auctioned WT Act licences.
- 1.59 However the Wireless Telegraphy (Licence Charges) (Amendment)(No2) Regulations 2015<sup>18</sup> (the "28 GHz Fees Regulations") omitted to include provision to enable fees for Spectrum Access 28 GHz licences to be paid over ten monthly instalments where the amount payable by a licence holder for any one or more licences held exceeds £100,000, as permitted for other licence classes listed in regulation 4 of the 2011 Regulations. The Regulations will enable Spectrum Access 28 GHz licensees to have the same opportunity as the holders of these other licence classes to pay fees by instalment. The fees for Spectrum Access 28 GHz licences set out in the 28 GHz Fees Regulations will remain unchanged.

### Cost to Ofcom

- 1.60 There are one-off administrative costs associated with making a Statutory Instrument. We consider the implementation costs to be low and offset by the benefits. There may be a slight reduction in spectrum management costs in certain areas.

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<sup>17</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/statement/CBFstatement.pdf>

<sup>18</sup> [http://www.legislation.gov.uk/uksi/2015/1995/pdfs/uksi\\_20151995\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1995/pdfs/uksi_20151995_en.pdf)

## **Do Nothing**

- 1.61 The main alternative amongst the specific options open to us would be to do nothing. By doing nothing, we mean not making the Regulations and maintaining the fees in the 2011 Regulations as amended for all relevant licence classes. This would mean that we would not be implementing policy changes that Ofcom had previously consulted and decided upon and in relation to which we had published statements.

### Aeronautical licence classes

- 1.62 There is excess demand from within the aeronautical sector. It is often very difficult to meet new requests for aeronautical VHF communications frequencies required by aerodromes and air traffic controllers. Failure to implement the Regulations would mean that the issue of spectrum scarcity continues to not be addressed.
- 1.63 The decision Ofcom made to adopt AIP for certain classes of Aeronautical licence is consistent with Ofcom's duties under sections 3 of the 2003 and WT Acts. Not making the Regulations to give full effect to that decision would risk continued inefficient use of spectrum that would be inconsistent with our duties as set out in sections 3 of the two Acts.

### Local TV DTT Multiplex

- 1.64 Local TV DTT multiplexes are relatively new services which were launched in 2013, but we began charging for in 2014, following our decision to make the Wireless Telegraphy ((Licence Charges) (Amendment) Regulations 2014<sup>19</sup>. The fee increase is set at a level which reflects the costs Ofcom incurs in connection with our radio spectrum functions. We considered this is a sufficient period to manage any potential risk. Not recovering the appropriate level of cost from this sector could lead to higher costs in other areas. In addition, it would mean that cost would remain at half the fee we have previously consulted and published our decision on.
- 1.65 Therefore, not including the fees in the Regulations would risk inefficient use of spectrum that would be inconsistent with our duties as set out in the 2003 and WT Acts.

### MCWSDs

- 1.66 Not including the fees for MCWSD licences in the Regulations, could create stakeholder uncertainty about the amount of fees payable. There would be no easily accessible way of determining the fees and payment frequency for MCWSDs licences.

### Spectrum Access Offshore Mobile

- 1.67 Without the Regulations, the fees for the Spectrum Access Offshore Mobile licence would not be clear to stakeholders. This would lead to a lack of consistency in presentation of the fees and possible confusion about the amount payable. This may lead to higher administrative costs to stakeholders as they try to obtain this information.

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<sup>19</sup> [http://www.legislation.gov.uk/uksi/2014/1295/pdfs/ukxi\\_20141295\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/1295/pdfs/ukxi_20141295_en.pdf)

## Spectrum Access 28 GHz

- 1.68 By doing nothing, Spectrum Access 28 GHz licensees would not benefit from being able to make prescribed payments by instalments. This would not be consistent with the payment interval options already open to some licensees in other licence classes meeting similar criteria under regulation 4 of the 2011 Regulations.

### **The preferred option**

- 1.69 In order to continue to meet our spectrum management duties, and in light of the assessments referred to above, our preferred approach was to make Regulations.
- 1.70 Although they are difficult to quantify, we believe, for the reasons set out in more detail in the assessments referred to above, that these benefits are likely to exceed the costs to stakeholders of the increases in fees that will apply in some cases. Moreover, if we did not update our spectrum fees – for example, to reflect the value of the spectrum in appropriate cases, and reduce charges to reflect administrative costs in others - it might harm the efficient use of spectrum. We would not be acting consistently with our wider spectrum management duties, which would have repercussions in terms of economic efficiency.
- 1.71 For the reasons identified in the preceding paragraphs we consider the benefits of making the Regulations outweigh the costs. Ofcom therefore decided to make the Regulations.

### **Equality Impact Assessment**

- 1.72 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. Equality Impact Assessments also assist Ofcom in making sure that it is meeting its principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 1.73 Ofcom has not identified any particular impact of its decision to make the Regulations in relation to the identified equality groups. Specifically, Ofcom does not envisage the impact of any outcome from making the Regulations to be to the detriment of any particular group of society. All UK consumers and citizens would have access to these services, potentially at end-user prices reflective of all general input costs, including opportunity costs of spectrum used.
- 1.74 In addition, we note that there is no available evidence to suggest the decision to apply the further phases of AIP charging would have a significantly greater direct financial impact on any of the identified equality groups relative to consumers in general. Nor would cost reflective end-user prices therefore be expected to impact significantly differently on these groups as a result of charging for WT Act licences.
- 1.75 We have not seen the need to carry out separate Equality Impact Assessments in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependants. This is because Ofcom anticipates that the Regulations will not have a differential impact in Northern Ireland compared to consumers in general.

**Declaration**

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

**Signed**

**Philip Marnick**

**Group Director, Spectrum Group**

**13 June 2016**

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