



Ofcom's decision to make the
Wireless Telegraphy (Licence
Charges for the 900 MHz
frequency band and the 1800 MHz
frequency band) (Amendment and
Further Provisions) (Amendment)
Regulations 2016

Publication date:

Statement
22 July 2016

About this document

Ofcom is today announcing that, following consideration of consultation responses, we have amended the regulations setting the fees payable for the 900 MHz and 1800 MHz spectrum.

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

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

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

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Section 1

Summary

- 1.1 This document sets out our decision of 21st July 2016 to make the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016 (the '**July 2016 Regulations**').
- 1.2 The July 2016 Regulations amend regulations 6(2) and 7(2) of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015¹ (the '**Principal Regulations**').
- 1.3 Specifically, the July 2016 Regulations replace the reference in the formulae in regulations 6(2) and 7(2) of the Principal Regulations to "125.6", which is the all items consumer price index ("**CPI**") for March 2013 calculated by the Office for National Statistics as applicable at the time when Ofcom made the Principal Regulations, with a reference to "98.1", which is the CPI for March 2013 as subsequently calculated by the Office for National Statistics in line with its latest methodology for calculating the CPI.
- 1.4 Before deciding to make the July 2016 Regulations, in accordance with the requirements of section 122(4) of the Wireless Telegraphy Act 2006 (the '**2006 Act**'), on 13 April 2016 we published a notice setting out our proposal to make them (the "**Notice**").² The Notice also contained a draft of the proposed regulations and asked stakeholders whether they had any comments or representations on the proposed statutory instrument set out in the Notice.
- 1.5 We received two responses to the Notice.
- 1.6 In accordance with section 122(4)(c) of the 2006 Act, we have considered the comments received from stakeholders. After doing so, and for the reasons set out in this document, we have decided to adopt the regulations as proposed.
- 1.7 The July 2016 Regulations will be available on the government's legislation.gov.uk website.³ A copy in draft form is annexed to this statement for indicative purposes, in the form submitted for registration and publication after their making by Ofcom. The government's legislation.gov.uk website is the only authorised source for published statutory instruments.
- 1.8 The July 2016 Regulations will come into force on 12th August 2016.

¹ S.I. 2015/1709 (http://www.legislation.gov.uk/uksi/2015/1709/pdfs/ukxi_20151709_en.pdf).

² Notice of Ofcom's proposal to amend the Wireless Telegraphy (Licence charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) (Amendments and Further Provisions) Regulations 2015, 13 April 2016: <http://stakeholders.ofcom.org.uk/consultations/900-MHz-1800-MHz-frequency-bands/>

³ <http://www.legislation.gov.uk/>

Section 2

Background

The legislative framework

- 2.1 Ofcom sets the sums payable in respect of wireless telegraphy licences by way of regulations made under section 12 of the Wireless Telegraphy Act 2006 (the '**2006 Act**'). When doing so, Ofcom must comply with section 122 of the 2006 Act, which is a general provision about matters relating to Ofcom's power to make statutory instruments, including fees regulations under section 12 of the 2006 Act. This provision includes a requirement that, where we are proposing to make regulations, we must publish a notice setting out the general effect of the regulations and give a period of at least one month within which representations on the proposed regulations may be made to us. Section 122(7) of the 2006 Act enables Ofcom to make different provisions for different cases and to make incidental provisions.
- 2.2 On 20 December 2010, the Secretary of State made directions pursuant to section 5 of the 2006 Act, which among other things require Ofcom to revise the sums prescribed by regulations under section 12 of the 2006 Act for 900 MHz and 1800 MHz licences so that they reflect the full market value of the frequencies in those bands.
- 2.3 The directions are contained in The Wireless Telegraphy Act 2006 (Directions to Ofcom) Order 2010 (S.I. 2010/3024)⁴ (the "**Directions to OFCOM Order**").

The Principal Regulations

- 2.4 On 23 September 2015, in order to give effect to article 6 (paragraphs 1 and 2) of the Directions to OFCOM Order, Ofcom made the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015⁵ (the '**Principal Regulations**'), which amended the Wireless Telegraphy (Licence Charges) Regulations 2011 (the "**2011 Fees Regulations**").⁶ Specifically, the Principal Regulations removed the level of the fees payable for the 900 MHz and 1800 MHz licences from the 2011 Fees Regulations and prescribed the new fee levels for these licences.
- 2.5 According to article 6(2) of the Directions to OFCOM Order, in revising the fees payable for the 900 MHz and the 1800 MHz bands, Ofcom must have particular regard to the sums bid for licences in the UK auction for the 800 MHz and 2600 MHz bands (the '**UK 4G auction**'), which was completed in March 2013. In line with this provision, Ofcom set the revised fees by reference to its estimate of the market value for 900 MHz spectrum and 1800 MHz spectrum at the time of the UK 4G auction (i.e. the 'base levels'). The 'base levels' were therefore expressed in March 2013 prices, which is when the 4G auction was completed.
- 2.6 Under regulations 6 and 7 of the Principal Regulations, the fees payable for the 900 MHz and the 1800 MHz bands from 31st October 2016 onwards are to be

⁴ S.I. 2010/3024 (http://www.legislation.gov.uk/ukxi/2010/3024/pdfs/ukxi_20103024_en.pdf).

⁵ See footnote 1 above.

⁶ S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334 and 2015/1995.

determined in accordance with a formula that adjusts the ‘base levels’⁷ every year by inflation. The ‘base date’ for the purpose of the inflation adjustment is March 2013, this being the month in which the UK 4G auction was completed. The index used in the Principal Regulations to give effect to the adjustment to inflation is the all items consumer price index (“CPI”), which is calculated and published on a monthly basis by the Office for National Statistics.

- 2.7 As explained in Ofcom’s Statement of 24 September 2015 (“*Annual licence fees for 900 MHz and 1800 MHz spectrum*”)⁸ and Ofcom’s Notice of 1 August 2014 (“*Notice of Ofcom’s proposal to make regulations to revise the fees payable for 900 MHz and 1800 MHz licences*”),⁹ the formulae set out in regulations 6(2) and 7(2) of the Principal Regulations use the following CPI figures for the adjustment to inflation:
- a) the latest available CPI at the date falling one month before the date when the fees are due (i.e. “*P*”, defined as “*the most recent CPI that is available on 30th September of the year in which the charges are due*”). Inflation data related to each month is usually published by the Office for National Statistics in the second half of the following month. Therefore, this should normally be the CPI for the month of August immediately preceding the payment date (e.g. the CPI for August 2016 should be used to calculate the fees payable on 31st October 2016); and
 - b) the CPI for March 2013. When Ofcom made the Principal Regulations, the CPI for March 2013, as calculated and published by the Office for National Statistics, was equal to 125.6¹⁰. This was calculated by the Office for National Statistics using 2005 as the “reference year” (i.e. the average of the monthly indices of that year were set to equal 100).

Statutory notice of Ofcom’s proposals to amend the Principal Regulations

- 2.8 On 13 April 2016, we published a notice of Ofcom’s proposal to make the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016, that would amend the Principal Regulations (the “**Notice**”).¹¹
- 2.9 In the Notice, we noted that in its Statistical Bulletin of 16 February 2016,¹² which relates to the CPI for January 2016, the Office for National Statistics started calculating CPI using 2015 as the new reference year. Therefore, we expect that the Office for National Statistics will continue to use 2015 as the reference year for calculating CPI, until a new re-referencing takes place.

⁷ The ‘base levels’ for the annual licence fees (expressed in March 2013 prices) are: (a) £451,200 per each 2 x 200 kHz channel in the 900 MHz band and (b) £326,000 per each 2 x 200 kHz channel in the 1800 MHz band.

⁸ See paragraphs 8.46-8.54 of Ofcom’s Statement of 24 September 2015:

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

⁹ See paragraphs 2.42-2.46 and 2.49 of Ofcom’s Notice of 1 August 2014:

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

¹⁰ See the Statistical Bulletin of 16 April 2013, related to March 2013 (Table A, p. 4):

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

¹¹ See footnote 2 above.

¹² <http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/january2016>

- 2.10 We said that, in light of this change of methodology (the “re-referencing”), we need to amend the Principal Regulations to ensure consistency between the figure representing the CPI for March 2013, as stated in the Principal Regulations, and the figure for the latest available CPI which goes into the formula to determine the level of the fees payable each year (i.e. “*P*”).
- 2.11 We noted that the Office for National Statistics has published full back series of the revised indices, including all consumer price indices preceding January 2016, re-referenced to 2015¹³. The CPI for March 2013, as re-referenced to 2015 by the Office for National Statistics, is 98.1. In the Notice, we proposed to substitute 98.1 for 125.6, which is the figure representing the CPI for March 2013, as currently stated in the Principal Regulations.
- 2.12 We explained that:
- a) the proposed regulations would amend regulation 6(2) of the Principal Regulations, which sets out the formula for calculating the licence fees for 900 MHz spectrum payable from 31st October 2016 onwards, by replacing “125.6” with “98.1”;
 - b) similarly, the proposed regulations would amend regulation 7(2) of the Principal Regulations, which sets out the formula for calculating the licence fees for 1800 MHz spectrum payable from 31st October 2016 onwards, by replacing “125.6” with “98.1”.
- 2.13 We said that the general effect of the proposed changes would be to ensure consistency between the figure representing the CPI for March 2013, as stated in the Principal Regulations, and the figure for the latest available CPI which goes into the formula to determine the level of the fees payable each year (“*P*”). We noted that this would continue to give effect to Ofcom’s Statement of 24 September 2015 and ensure that these fees will vary in line with inflation. We specified that, in other words, the proposed amendment would ensure that the method for determining the fees payable for the 900 MHz frequency band and the 1800 MHz frequency band remains the same as intended by that Statement and given effect to by the Principal Regulations made at that time.
- 2.14 For the avoidance of doubt, we specified that the proposed changes would apply to all licence fees for 900 MHz and 1800 MHz spectrum payable from October 2016 onwards (i.e. those payable on October 2016 and on each anniversary of that date). They would not apply to the fees payable according to regulations 4 and 5 of the Principal Regulations on the first payment date following the entry into force of those Regulations (i.e. on 31st October 2015, 28th February 2016 and 31st July 2016). We calculated those fees using the CPI for August 2015¹⁴ and the CPI for March 2013, as available at the time of making the Principal Regulations (i.e. 125.6), which were both referenced to the same year (2005 = 100).
- 2.15 The Notice included a copy of the proposed regulations and invited stakeholders to provide comments by 16 May 2016.

¹³ <http://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt>

¹⁴ The CPI for August 2015, as calculated by the Office for National Statistics using 2005 as the reference year and published in its Statistical Bulletin of 15 September 2015 (see Table A, p. 5), is 128.4: <http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/2015-09-15>

Section 3

Stakeholders' responses and Ofcom's decision

Stakeholders' responses

- 3.1 We received two responses, which are published in full on our website.¹⁵
- 3.2 Vodafone Limited ("**Vodafone**") agreed with us that we need to amend the Principal Regulations to reflect the recent change to the CPI tables and indexed values by the Office for National Statistics. Specifically, Vodafone said that the proposed amendment (i.e. replacing 125.6 with 98.1) "*would currently achieve the objective of indexing the 900MHz and 1800MHz annual fees with the level of inflation, measured by the CPI, between the starting date of March 2013 and the relevant annualisation date*", noting that "*there are small differences from the change, that arise from rounding, but these can be considered to be de minimis*". Vodafone suggested, however, that we "*replace the proposed absolute value of 98.1 with a formula reference*", such as "B", to be defined as "*the CPI index value for March 2013 consistent with the value of P*". Vodafone commented that the use of a "formula reference" would prevent the need for a further revision to the regulations in the event that there was another change to the CPI calculation methodology or indexation in the next few years.
- 3.3 EE Limited ("**EE**") said that it did not have any formal consultation response in relation to Ofcom's proposals. However, EE added that the Ofcom's consultation prompted EE to consider "*another potentially relevant change affecting the assumptions used by Ofcom to calculate ALFs in the ALF Statement*". Specifically, EE invited Ofcom to reconsider whether it would be appropriate to change the ALFs in light of HM Treasury's latest announcements in relation to the UK corporate tax. According to EE, "*the net effect of the change to the TAF [tax adjustment factor], which would result from adopting the latest information now available from HM Treasury regarding future corporation tax, would be to reduce ALFs by a relatively small amount of approximately 0.3%*".

Ofcom's response

- 3.4 We acknowledge Vodafone's point that referring to the CPI for March 2013 in more generic terms, such as the definition suggested by Vodafone, might avoid the need for a further revision in the event that the Office for National Statistics started calculating CPI using a reference year other than 2015 in the future.
- 3.5 However, in these specific circumstances, we consider it appropriate to retain the approach adopted in the Principal Regulations (i.e. referring to the specific figure corresponding to the CPI for March 2013). This is because, given the nature of the subject, it is crucial that the provisions explaining how fees should be calculated is clear and leaves no room for ambiguity or doubt. We also note that the Office for National Statistics has started calculating CPI using 2015 as the new reference year quite recently (in February 2016), so it is unlikely that a new re-referencing will take place in the next few years.

¹⁵ <http://stakeholders.ofcom.org.uk/consultations/900-MHz-1800-MHz-frequency-bands/?showResponses=true>

- 3.6 We also note Vodafone's comment that "*there are small differences from the change, that arise from rounding*", which Vodafone has characterised as "*de minimis*". We agree with Vodafone that replacing "125.6" with "98.1" results in small differences deriving from rounding. However, this is a small rounding issue which is an inevitable effect of the CPI index being specified by the Office for National Statistics to one decimal place.
- 3.7 As to EE's suggestion that we should reconsider whether it would be appropriate to change the ALFs in light of HM Treasury's latest announcements in relation to the UK corporate tax, we consider that this comment is not relevant to the proposals set out in the Notice.¹⁶

The July 2016 Regulations

- 3.8 Having considered stakeholders' responses, we have decided to adopt the regulations as proposed.
- 3.9 The July 2016 Regulations will come into force on 12th August 2016.

¹⁶ See also paragraph 8.60 of Ofcom's Statement of 24 September 2015.

Annex 1

Statutory instrument

- A1.1 A copy of this statutory instrument is annexed to this Statement for indicative purposes. The statutory instrument will be formally published on the government's legislation.gov.uk website in due course.

STATUTORY INSTRUMENTS

2016 No. 0000

ELECTRONIC COMMUNICATIONS

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

Made - - - - - *21st July 2016*

Coming into force - - - - - *12th August 2016*

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

Before making these Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act, and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) (Amendment) Regulations 2016 and shall come into force on 12th August 2016.

(a) 2006 c. 36.

(b) S.I. 2010/3024.

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

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

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

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

Philip Marnick

Group Director, Spectrum Group

For and by the authority of the Office of Communications

21st July 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulations 6(2) and 7(2) of the principal Regulations set out the formulae for calculating the fees payable from 31st October 2016 onwards. These formulae include “125.6”, which is the all items consumer price index (the “CPI”) for March 2013 as calculated by the UK Statistics Authority and applicable at the time when the principal Regulations were made. Regulation 2 of these Regulations replaces “125.6” with “98.1”, which is the CPI for March 2013 as subsequently calculated by the UK Statistics Authority in line with their latest methodology for calculating the CPI. This figure (98.1) is set out in the CPI time series dataset. The dataset is available on the Office for National Statistics’ website at <https://www.ons.gov.uk>.

OFCOM’s consultation document on these Regulations is available on OFCOM’s website at <http://www.ofcom.org.uk>.

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

(c) S.I. 2015/1709.