
Notice of proposal to make the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2019

Consultation on proposed changes to the Wireless
Telegraphy (Automotive Short Range Radar)
(Exemption) Regulations arising as a result of
withdrawal of the United Kingdom from the European
Union

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1. Overview

What we are consulting on - in brief

In line with the approach taken by Government departments and agencies, Ofcom is preparing for all eventualities relating to the UK's planned withdrawal from the EU. With this in mind, we are consulting on proposed changes that would need to be made to one of Ofcom's regulatory instruments, in the event that the United Kingdom leaves the European Union on 29 March 2019 without a withdrawal agreement being in place.

Ofcom proposes to make an amendment to the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013. These regulations exempt the use of certain short range radars (SRR) equipment in the 24 GHz band that are installed, or replace equipment, in a vehicle that was registered, placed on the market or put into service in the Community (i.e. in the European Union) after 30 June 2013 from the need to hold a Wireless Telegraphy Act licence.

If these regulations are not amended, this licence exemption would cease to apply to equipment in vehicles that are registered, placed on the market or put into service in the United Kingdom after Exit Day, since the United Kingdom would cease to be a member of the European Union. We are therefore proposing to amend the regulations to cover equipment that is installed in a vehicle which is registered, placed on the market or put into service in the United Kingdom or in the European Union after Exit Day. The proposed changes would make sure that the scope of the Regulations remains the same.

To implement these proposals, we are consulting on making the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2019. Any comments on the regulations are sought by 5pm on 22 March 2019.

This overview is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

- 1.1 On 23 June 2016, the United Kingdom voted to leave the European Union. Under the terms of the European Union (Withdrawal) Act 2018, the United Kingdom will leave the European Union on 29 March 2019 at 11.00pm ('Exit Day').
- 1.2 The Withdrawal Act provides for any deficiencies in EU-related legislation arising from the United Kingdom's withdrawal from the European Union to be corrected by regulations made by the Secretary of State. Ofcom has worked with Government to identify where such deficiencies will arise in the legislation governing the sectors for which we have regulatory responsibilities. The secondary legislation needed to correct those deficiencies is currently being considered by Parliament.
- 1.3 This document provides notice of, and invites stakeholders' views on, Ofcom's proposals to amend the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013 to make sure the scope of the Regulations remains the same in the event that the

United Kingdom leaves the European Union on 29 March 2019 without a withdrawal agreement being in place. To implement this change we are consulting on making the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2019.

- 1.4 Ofcom has power to make regulations by way of statutory instrument that exempt the need for certain devices to obtain a licence under the Wireless Telegraphy Act 2006 ('the 2006 Act'). Ofcom has made the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013 (the "SRR Regulations") which exempt the use of certain short range radars (SRR) established or installed in motor vehicles in the 24 GHz band from the need to hold a Wireless Telegraphy Act licence. SRRs are used in a variety of safety applications from autonomous emergency breaking, lane change assistance to parking assistance.
- 1.5 Our aim in proposing these changes is ensure that in so far as possible the SRR Regulations continue to have the same scope and effect after Exit Day as before, by making the minimum changes necessary to the text of the Regulations.
- 1.6 We are not proposing to make any policy changes as a result of this consultation. If it may be appropriate to consider changing the scope of application of any Ofcom regulations as a result of the United Kingdom's exit from the European Union, any such changes will be considered at a later date, as and when appropriate.
- 1.7 The UK Government has negotiated a withdrawal agreement with the European Union.¹ If that agreement is approved, there will be a transition and implementation period during which the United Kingdom will from a legal perspective continue to be treated for many purposes as if it were still an EU member state. In that case, it may not be necessary to make these changes to Ofcom regulations until the end of the transition and implementation period envisaged in the withdrawal agreement and the accompanying domestic legislation. We are consulting on these changes now in case the United Kingdom leaves the European Union on Exit Day without a withdrawal agreement being in place.

¹ <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

2. Notice

General legislative background

- 2.1 Under section 8 (1) of the 2006 Act, it is unlawful to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus except under and in accordance with a wireless telegraphy licence granted under the 2006 Act.
- 2.2 Under section 8 (3) of that Act, Ofcom may make regulations exempting from the licensing requirements under section 8 (1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or description as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be specified.
- 2.3 Under section 8(4) of the 2006 Act, we must make regulations to exempt equipment if its installation or use is not likely to:
- involve undue interference with wireless telegraphy;
 - have an adverse effect on technical quality of service;
 - lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - endanger safety of life;
 - prejudice the promotion of social, regional or territorial cohesion; or
 - prejudice the promotion of cultural and linguistic diversity and media pluralism.
- 2.4 In accordance with the requirements of section 8(3B) of the 2006 Act, the terms, provisions and limitations specified in the regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.
- 2.5 We make exemption regulations by means of a statutory instrument. Before making any such regulations, we are required by section 122(4) of the 2006 Act to give notice of our proposal to do so. Under section 122(5), the notice must state that we propose to make the regulations in question, set out their general effects, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time period of at least one month during which any representations with respect to the proposal must be made to us.

The proposed changes – notice of Ofcom’s proposals

- 2.6 The SRR Regulations implemented the European Commission decision on the harmonisation for the use of automotive SRR equipment in the 24 GHz spectrum band (21.65 to 26.65 GHz) in the Community (2005/50/EC)². This decision was later amended in 2011 by European Commission Decision 2011/458/EU³.
- 2.7 In accordance with the European Commission Decisions, the SRR Regulations permit automotive SRR equipment that is installed, or that is replacing equipment so installed, in a vehicle that was registered, placed on the market or put into service in the Community (i.e. in the European Union) after 30 June 2013 to operate in the 24.25 to 26.65 GHz part of the 24 GHz band on a licence-exempt basis (subject to compliance with various terms, provisions and limitations).⁴ Specifically:
- a) Regulation 5(1) provides that the establishment or installation of automotive SRR equipment in a vehicle and the use of equipment so established or installed is exempt from the provisions of section 8(1) of the 2006 Act where the terms, provisions and limitations in regulation 5 are met.
 - b) Regulation 5(2) provides that the establishment or installation of the equipment must be in a vehicle which was registered, placed on the market or put into service in the Community after 30 June 2013, or must be in a vehicle in which equipment was so established or installed in order to replace that equipment.
- 2.8 If the SRR Regulations are not amended, this licence exemption would cease to apply to equipment in vehicles that are registered, placed on the market or put into service in the United Kingdom after Exit Day, since the United Kingdom would cease to be a member of the European Union. It would therefore become unlawful for such equipment to use the spectrum without a licence granted by Ofcom.
- 2.9 We therefore propose to amend the SRR Regulations so that they will continue to permit the operation of automotive SRR equipment in the 24.25 to 26.65 GHz part of the 24 GHz band on a licence exempt basis, where such equipment is installed in a vehicle which is registered, placed on the market or put into service in the United Kingdom or in the European Union after Exit Day.
- 2.10 We have considered whether to amend this exemption so that it would apply only in relation to equipment installed in vehicles which are registered, placed on the market or put into service in the United Kingdom. However, this would amount to a narrowing in scope of application of the exemption. As explained above, we are not proposing to change

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:021:0015:0020:EN:PDF>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0485:EN:PDF>

⁴ The SRR Regulations also permit automotive SRR equipment that was installed, or that is replacing equipment so installed, in a vehicle that was registered, placed on the market or put into service in the Community between 1 July 2005 and 30 June 2013 are permitted to continue to use the 21.65 and 24.25 GHz part of the 24 GHz band on a licence-exempt basis (subject to complying with various terms, provisions and limitations), but this was closed to new deployments from 30 June 2013. This exemption is not affected by the proposals set out in this document.

the scope of any regulatory conditions or implement any changes of regulatory policy through this consultation.

- 2.11 Given that the proposals are intended merely to ensure the current effect and scope of the SRR Regulations is maintained after the United Kingdom leaves the EU, we do not anticipate the proposed changes will have any impact on stakeholders. Therefore, we are not intending to carry out a formal regulatory impact assessment.

Notice of proposals

- 2.12 To give effect to the proposed changes, we are proposing to make the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2019 (the “Proposed Regulations”), set out in Annex A1 to this document.
- 2.13 In accordance with the requirements of section 122(4) and (5) of 2006 Act, this document gives statutory notice of our proposals to make the Proposed Regulations.
- 2.14 The Proposed Regulations would amend regulation 5(2) of the SRR Regulations to replace the existing wording, which specifies that, in order for the licence exemption to apply, the establishment or installation of equipment must be in a vehicle which is registered, placed on the market or put into service in the Community.
- 2.15 In its place, the Proposed Regulations would substitute new wording for regulation 5(2) which requires that the equipment must be established or installed in a vehicle which was registered, placed on the market or put into service: (a) in the European Union during the period starting on 1 July 2013 and ending immediately before Exit Day; or (b) in the United Kingdom or in the European Union after Exit Day. The proposed new wording would also continue to exempt equipment in a vehicle in which equipment was so established or installed in order to replace that equipment.

Comments and representations

- 2.16 We are seeking comments on the drafting of the Proposed Regulations and whether they correctly implement our proposals to maintain the scope and effect of the SRR Regulations after the United Kingdom leaves the EU. We are not seeking comments on any potential changes to the scope or policy, which will be considered at a later date, if appropriate.

Question: Do you have any comments on the drafting of the Proposed Regulations?

- 2.17 Comments on the Proposed Regulations are invited by 5pm on 22 March 2019.

Entry into force of the Proposed Regulations

Subject to our consideration of responses, we intend to bring the new Regulations into force on Exit Day if no withdrawal agreement is reached with the European Union.

A1. Proposed Regulations

STATUTORY INSTRUMENTS

2019 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2019

Made - - - - XXXX

Coming into force in accordance with regulation 1

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 8(3) of the Wireless Telegraphy Act 2006⁽⁵⁾ (“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 that notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2019 and shall come into force on exit day.

Amendment of the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013

2.—(1) The Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013⁽⁶⁾ are amended in accordance with this regulation.

(2) In regulation 5 (second exemption), for paragraph 2 substitute—

“(2) The establishment or installation must be in a vehicle which was registered, placed on the market or put into service—

(a) in the European Union during the period starting on 1 July 2013 and ending immediately before exit day; or

(b) in the United Kingdom or in the European Union after exit day,

or must be in a vehicle in which equipment was so established or installed in order to replace that equipment.”

⁽⁵⁾ 2006 c. 36

⁽⁶⁾ S.I. 2013/1437

[Date]

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

A2. Responding to this consultation

Delete these annexes if your document is not a consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 22 March 2019.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/consultation-notice-of-proposal-to-make-the-wireless-telegraphy-automotive-short-range-radar-exemption-regulations-2019>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to paul.chapman@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after 22 March 2019.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Paul Chapman
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.

- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document.. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom’s proposals would be.
- A2.10 If you want to discuss the issues and questions raised in this consultation, please contact Paul Chapman on 020 79813069, or by email to paul.chapman@ofcom.org.uk.

Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents’ views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don’t have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom’s intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A2.15 Following this consultation period, Ofcom plans to publish a statement in March 2019.
- A2.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A2.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

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

Name/contact details/job title

Whole response

Organisation

Part of the response

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)