



Notice of proposals to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016

Consultation

Publication date:

8 April 2016

Closing Date for Responses:

10 May 2016

About this document

This consultation document relates to Ofcom's proposal to amend the existing licence charges (fees) for some Wireless Telephony Act products.

The proposed regulations will implement the fifth and final phased increase of fees for some Aeronautical licences, implement the final phased fee increase for Local Television DTT Multiplex; introduce fees for Manually Configurable White Space Devices and Spectrum Access Offshore Mobile licence products; and make provision for enabling the licence fees for Spectrum Access 28 GHz to be made over ten monthly instalments, where the amount payable exceeds £100,000.

The deadline to submit responses for this consultation is 10 May 2016.

Contents

Section	Page
1 Executive summary	3
2 Notice	5
3 Proposed changes	7
4 General effect of the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016	11

Annex	Page
1 Responding to this consultation	13
2 Ofcom's consultation principles	15
3 Consultation response cover sheet	16
4 Consultation question	18
5 Impact Assessment	19
6 Draft Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016	33

Section 1

Executive summary

- 1.1 This document consults on draft regulations, the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016 (the “Proposed Regulations”), that would amend the Wireless Telegraphy (Licence Charges) Regulations 2011¹ (the “2011 Regulations”). The Proposed Regulations set out the changes that we propose to make to licence charges (fees) for some classes of wireless telephony licence other than those awarded by auction. Unless stated in this document, all other licence charges would remain unchanged from the 2011 Regulations.
- 1.2 In summary, the Proposed Regulations would make the following changes:
 - implement the fifth and final phase of Administrative Incentive Pricing (AIP) set out through consultation and confirmed in our statement of June 2011² for the following aeronautical licences:
 - Aeronautical Station (Air/Ground, Aerodrome Flight Information Service (AFIS) and Tower);
 - Aeronautical Station (Approach);
 - Aeronautical Station (Aeronautical Broadcast);
 - Aeronautical Station (Aircraft Communications Addressing and Reporting System (ACARS));
 - Aeronautical Station (Area Control); and
 - Aeronautical Station (Very High Frequency Data Link (VDL)).
 - 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, as confirmed in our March 2014 statement³;
 - introduce fees for the Manually Configurable White Space Devices (MCWSD) as confirmed in our September 2015 statement⁴;

¹ <http://www.legislation.gov.uk/uksi/2011/1128/made/data.pdf> as amended by:
<http://www.legislation.gov.uk/uksi/2012/1075/made>
<http://www.legislation.gov.uk/uksi/2013/917/made>
<http://www.legislation.gov.uk/uksi/2014/1295/made>
<http://www.legislation.gov.uk/uksi/2015/1334/made>
<http://www.legislation.gov.uk/uksi/2015/1995/made>

² “Bespoke licence fees for aeronautical VHF communications frequencies, a statement”
http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

³ “Spectrum Pricing: A framework for setting cost based fees”
<http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/statement/CBFstatement.pdf>

⁴ “Licensing manually configurable white space devices”
http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/statement/Licensing_manually_configurable_white_space_devices.pdf

- introduce cost-based fees for the new licence product Spectrum Access Offshore Mobile; and
- amend regulation 4 of the 2011 Regulations to allow for fees for the Spectrum Access 28 GHz licence class to be paid in ten equal instalments where the amount payable exceeds £100,000.

1.3 In accordance with the requirements of section 122(4) and (5) of the Wireless Telegraphy Act 2006 (the “WT Act”) this document gives notice of our intention to make the Proposed Regulations. Comments on the Proposed Regulations are invited by 5pm on 10 May 2016. Subject to consideration of responses we intend to bring the new Regulations into force in June 2016. An impact assessment for the Proposed Regulations is available at Annex 5. The Proposed Regulations are included in this document at Annex 6. Further copies may be obtained from www.ofcom.org.uk or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

Section 2

Notice

Introduction

- 2.1 Ofcom is responsible for authorising civil use of the radio spectrum and achieves this by granting wireless telephony licences under the Wireless Telephony Act 2006 (the “WT Act”) and by making regulations exempting users of particular equipment from the requirement to hold such a licence. Under section 12 of the WT Act we must prescribe in regulations the sums payable in respect of wireless telephony licences other than those awarded by auction.
- 2.2 The power under section 12 of the WT Act enables us to make regulations prescribing charges to recover the cost of administering and managing WT Act licences. However, section 13 of the WT Act permits us to recover sums greater than those we incur in performing our spectrum management functions. For non-auctioned spectrum, cost can be recovered either through fees based on Administered Incentive Pricing (AIP) or through cost-based fees.
- 2.3 AIP refers to prices for annual licence fees which are set above administrative costs to reflect a range of spectrum management objectives. In particular, to provide incentives for licensees to use their spectrum more efficiently. This goes to discharging our duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum.
- 2.4 Before making any regulations, we are required by section 122(4) of the WT Act to give notice of our proposal to do so. Under section 122(5), the notice must state that Ofcom proposes to make the regulations in question, set out their general effect, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time before which any representations with respect to the proposal must be made to Ofcom. That time must be at least one month beginning with the day after that on which the notice is given or published.
- 2.5 This document gives notice of our proposal to make the Wireless Telephony (Licence Charges) (Amendment) Regulations 2016 (the “Proposed Regulations”). It also sets out the general effect of the Proposed Regulations. A copy of the Proposed Regulations is in Annex 6 of this document.
- 2.6 This consultation invites comments on the drafting of the Proposed Regulations.

Document structure

- 2.7 The document is structured as follows:
 - Section 3 contains the proposed changes to the 2011 Regulations (as amended – see footnote 1 above);
 - Section 4 sets out the general effects of the Proposed Regulations;
 - Annexes 1 to 3 provide information on our approach to consultation;
 - Annex 4 contains the consultation question;

- Annex 5 details the impact assessment of the options considered; and
- Annex 6 has a copy of the Proposed Regulations.

Next steps

- 2.8 Following the publication of this consultation document, stakeholders are invited to provide their feedback on the drafting of the Proposed Regulations. Those who wish to do so have until 5pm on 10 May 2016 to make representations. We expect to release a statement on this consultation in June 2016, having taken responses into account, and to bring the regulations into force at the same time.

Section 3

Proposed changes

- 3.1 The following section outlines our proposals to make the Proposed Regulations in relation to the following licence products:
- Aeronautical:
 - Aeronautical Station (Air/Ground, Aerodrome Flight Information Service (AFIS) and Tower);
 - Aeronautical Station (Approach);
 - Aeronautical Station (Aeronautical Broadcast);
 - Aeronautical Station (Aircraft Communications Addressing and Reporting System (ACARS));
 - Aeronautical Station (Area Control); and
 - Aeronautical Station (Very High Frequency Data Link (VDL)).
 - Local Television DTT Multiplex;
 - Manually configurable white space devices (MCWSD);
 - Spectrum Access Offshore Mobile; and
 - Spectrum Access 28 GHz.

Aeronautical Station licences

- 3.2 In 2012, we introduced Administered Incentive Pricing (AIP) based fees for a variety of aeronautical licence classes. We set out the full rate for the licence fees in our statement “*Bespoke licence fees for aeronautical VHF communications frequencies*⁵” published on 7 June 2011.
- 3.3 As set out in paragraph 4.19 of that statement, the full AIP rate for these services was due to be phased in over a period of five years. The AIP fees for aeronautical licences are subject to a maximum cap specific to each licence class. We said that this cap would be progressively increased until 2016. The Proposed Regulations would implement the fifth and final phased increase. The changes to the caps for various licence products are set out in Table 1.

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

Table 1: Change in the maximum level of bespoke fees for aeronautical licences.

Licence class	Channel	2015/16 (current fee)	2016 onwards
Aeronautical Station (Air/Ground, AFIS & Tower)	8.33 kHz	£600	£3300
	25 kHz	£1900	£9900
Aeronautical Station (Approach)	8.33 kHz	£2000	£3300
	25 kHz	£6000	£9900
Aeronautical Station (Aeronautical Broadcast)	8.33 kHz	£2000	£3300
	25 kHz	£6000	£9900
Aeronautical Station (ACARS)	8.33 kHz	£2000	£3300
	25 kHz	£6000	£9900
Aeronautical Station – Area Control	8.33 kHz	£2000	£3300
	25 kHz	£6000	£9900
Aeronautical Station (VDL)	25 kHz	£6000	£9900
	50 kHz	£12000	£19800

Local Television DTT Multiplex

- 3.4 On 13 September 2013, we published a consultation “*Spectrum Pricing: A framework for setting cost-based fees*⁶” proposing a framework for setting WT Act fees for spectrum licences which are cost-based, and making specific proposals for setting WT Act fees for DTT multiplexes⁷.
- 3.5 Following this on 17 March 2014, we published a statement “*Spectrum Pricing: A framework for setting cost-based fees*⁸” confirming our decision to adopt the cost-based fees framework and cost allocation methodology for setting WT Act fees for licence classes where we apply cost-based fees. It also confirmed our decision to phase in fees for the Local TV DTT multiplex by setting the fees at £11,950 per annum (50%) for the first two years (2014-2015)⁹, then at £23,900 per annum (100%) from 2016. The Proposed Regulations would implement this change to complete the phase-in to the full fee level.

⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfffframework/summary/condoc.pdf>

⁷ These licences are held by the six national multiplex operators (the BBC, Digital 3&4, SDN and Arqiva), the local TV operator (Comux UK) and the Northern Ireland multiplex (operated as a joint venture by TG4 and RTÉ).

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

⁹ We implemented the first phased fee in the; “*The Wireless Telegraphy (Licence Charges) (Amendment) 2014*”, http://www.legislation.gov.uk/uksi/2014/1295/pdfs/uksi_20141295_en.pdf

Manually Configurable White Space Devices

- 3.6 On 27 February 2015, we published our proposal¹⁰ to introduce a new licence product: Manually Configurable White Space Devices (MCWSDs). The term “white space spectrum” refers to frequencies which, although allocated to users¹¹, are not being used at all times or at all locations. A white space device (WSD) can make use of these frequencies by consulting a database that will look at the spectrum environment and provide technical parameters so that the device can operate without causing interference to incumbent users. The devices currently operate in the UHF TV band (470 to 790 MHz). While most WSD are expected to operate on a licence exempt basis in the future, many do not currently meet our requirements for licence exemption and require manual configuration by the user.
- 3.7 On 25 September 2015, we published a statement “*Licensing manually configurable white space devices*”¹² (the “MCWSDs statement”) setting out our decision to authorise devices, on a transitional licensed basis, that do not operate automatically and instead require an element of manual configuration by an installer.
- 3.8 In our MCWSDs statement, we outlined our decision to apply an annual licence fee of £1,500. This fee was based on our estimates of likely costs of administering and managing interference for the new licence product which allows the licensee to deploy as many MCWSD as they wish in any part of the UK. We 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. The Proposed Regulations would implement our decision in the MCWSDs Statement.

Spectrum Access Offshore Mobile

- 3.9 As part of the award of spectrum in the 2.3 GHz and 3.4 GHz bands¹³ we stated that the awarded rights would not cover use of these bands offshore due to continued use by the Ministry of Defence. However, we advised that access to this spectrum in certain geographical areas would be permitted but on an individual licensed basis.
- 3.10 We have received some requests for access and have begun issuing Spectrum Access Offshore Mobile licences (mainly for use by windfarms and oil rigs outside the 12 nautical mile limit in areas not covered by the network operator licences). Previously these licences were issued on a bespoke one-off basis but with the upcoming award of the 2.3 GHz and 3.4 GHz bands, where the use of spectrum offshore is not covered under the territorial extent of the licences, and with the increasing number of requests for access to the spectrum, we believed that a standardised licence product was needed.

¹⁰ “Manually configurable white space device: Consultation on the licensing of manually configurable white space devices operating in the UHF TV band”

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

¹¹ The band is allocated to DTT broadcasting; PMSE also has access to frequencies in the band. WSD can access spectrum that is not used by either in a particular area.

¹² http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/statement/Licensing_manually_configurable_white_space_devices.pdf

¹³ <http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/statement/statement.pdf> - see in particular paragraphs 7.24 to 7.30

- 3.11 This licence product authorises use of the spectrum on a strictly non-protection/ non-interference basis in recognition of the fact that it relates to spectrum access for mobile services in areas not covered under the mobile network operator licences. Accordingly, the Spectrum Access Offshore Mobile licence does not grant any exclusive rights of use over the spectrum and licensees may not cause interference to other users nor claim any form of protection over it. To ensure that other licensed users are protected, the licence also contains strict limits to ensure that the signal strength coming into an incumbent user's licensed coverage area is in line with the limits set out in international agreements between the UK and neighbouring administrations for the frequency band in question.
- 3.12 We have set a licence fee of £5,000 payable every five years.¹⁴ This fee is cost-based and is in line with similar Spectrum Access licences that we issue for the Isle of Man and Channel Islands. It is also consistent with the policy set out in Ofcom's framework "*Spectrum Pricing: A framework for cost-based fees*" which we published on 17 March 2014¹⁵. Given the restrictions in the licence 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. The Proposed Regulations would introduce the fee into the 2011 Regulations to provide clarity to stakeholders over the availability and cost of this licence product.

Spectrum Access 28 GHz licence

- 3.13 On 8 December 2015, we published a statement¹⁶ of our decision to implement AIP fees for Spectrum Access 28 GHz licences. Following our decision, we made the Wireless Telegraphy (Licence Charges) (Amendment) (No2) Regulations 2015¹⁷ (the "28 GHz Fees Regulations") which set out the fees for Spectrum Access 28 GHz licences.
- 3.14 However, the 28 GHz Fees Regulations omitted to include provision to enable fees for Spectrum Access 28 GHz licences to be paid over ten equal instalments where the amount payable by a licence holder for any one or more licences held exceeds £100,000. We therefore propose to amend regulation 4 to permit the Spectrum Access 28 GHz licence to be included in the list of licence classes where the option of staged payments for amounts exceeding £100,000 is available. The proposed amendments will make minor changes to paragraphs 6 and 7 in regulation 4 of the 2011 Regulations. The fees set out in the 28 GHz Fees Regulations will remain unchanged.

¹⁴ This is consistent with the fee we have been charging up to now pursuant to regulation 6 of the 2011 Regulations, which applies where a fee is not prescribed under regulations made by Ofcom. Under regulation 6 licensees must pay "such sum as Ofcom may in the particular case determine".

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbframework/statement/CBFstatement.pdf>

¹⁶ "Fees for Spectrum Access 28 GHz Licences"

http://stakeholders.ofcom.org.uk/binaries/consultations/fees-spectrum-access-28ghz-licences/statement/28_gHz_fee_statement.pdf

¹⁷ http://www.legislation.gov.uk/uksi/2015/1995/pdfs/uksi_20151995_en.pdf

Section 4

General effect of the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016

The legislative framework

- 4.1 Ofcom can charge for the granting of wireless telegraphy licences, other than those awarded by auction, by making Regulations under section 12 of the WT Act. This power enables us to recover the cost of administering and managing WT Act licences. By virtue of section 13 of the WT Act we can use AIP to set licence fees above administrative costs to reflect a range of spectrum management objectives. In particular, in order to provide incentives for licensees to use their spectrum more efficiently. Doing so discharges a range of duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum.
- 4.2 We intend to make the Proposed Regulations, under section 12, to set the relevant charges. The Proposed Regulations would implement the changes to charges as proposed in this document.
- 4.3 The 2011 Regulations would be amended by the Proposed Regulations. A draft of the Proposed Regulations is included in Annex 6 of this document.

Extent of application

- 4.4 The Proposed Regulations would apply in the United Kingdom, the Channel Islands and the Isle of Man, subject to formal agreement of the Island Authorities.

Proposed Regulations

- 4.5 A draft of the Proposed Regulations is set out in Annex 6. Details of the changes are listed below:
- 4.6 Regulation 3 makes amendments to regulation 4 of the 2011 Regulations permitting the Spectrum Access 28 GHz licence class to be included in the list of licence classes eligible for staged payments.
- 4.7 Regulation 4 sets out the changes to Schedule 2 of the 2011 Regulations.
 - 4.7.1 Regulation 4(2)(a) to (f) amends the aeronautical licence classes introducing the fifth and final phased increase in fees;
 - 4.7.2 Regulation 4(3) amends the Local TV DTT Multiplex licence class introducing the second and final phase increase in fees;
 - 4.7.3 Regulation 4(4) introduces annual charges of £1,500 for a Manually Configurable White Space Devices licence;
 - 4.7.4 Regulation 4(5) introduces a fee of £5,000 payable every 5 years for a Spectrum Access Offshore Mobile licence.

Question: We would welcome any comments on the drafting of the Proposed Regulations, and in particular whether they give effect to what Ofcom intends (as outlined in this document).

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 10 May 2016**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-fees-notice-2016/howtorepond/form> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email Eniola.Awoyale@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Eniola Awoyale
Floor 3
Spectrum Policy Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA

- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Eniola Awoyale on 020 7783 4680.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at
<http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in June 2016.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see:
http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at
consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7783 4652

Email Steve.Gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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)

Annex 4

Consultation question

- A4.1 As required by Section 122 of the Wireless Telephony Act 2006, we must give notice of proposals that we intend to make and consider any representations that we receive. This document gives notice of our proposal to make the Wireless Telephony (Licence Charges) (Amendment) Regulations 2016.

Question 1) We would welcome any comments on the drafting of the Proposed Regulations, and in particular whether they give effect to what Ofcom intends (as outlined in this document).

Annex 5

Impact Assessment

Introduction

- A5.1 This annex, together with the reasoning provided in sections 1 to 4 and the analysis set out more fully in the consultation documents and statements referred to below (and elsewhere in this document), is an impact assessment relating to the draft Wireless Telegraphy (Licence charges) (Amendment) Regulations 2016 (the “Proposed Regulations”). Impact assessments are defined in section 7 of the Communications Act 2003 (the “2003 Act”). A separate impact assessment for the Proposed Regulations may not strictly be necessary in this case given the assessment of the underlying policies that has already been carried out and published in the various documents referenced in this notice. We nevertheless include this annex, which summarises the earlier, fuller assessments, as a matter of good practice.
- A5.2 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 means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, 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.

Background

- A5.3 This impact assessment relates to our proposal to update the regulations that prescribe charges for wireless telephony licences. The Proposed Regulations would amend the Wireless Telegraphy (Licence Charges) Regulations 2011 (SI 2011/1128)¹⁸ (the “2011 Regulations”). The Proposed Regulations would maintain most of the charges prescribed by the 2011 Regulations, but would also create new charges and amend a number of existing charges.
- A5.4 Under section 12 of the WT Act, Ofcom may prescribe in regulations the sums payable in respect of wireless telephony licences other than those awarded by auction. This power enables us to recover the cost of administering and managing WT Act licences. However, 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 AIP), to reflect a range of spectrum management objectives. In particular, in order to provide incentives for licensees to use their spectrum more efficiently.

¹⁸ <http://www.legislation.gov.uk/uksi/2011/1128/made/data.pdf> as amended by:
<http://www.legislation.gov.uk/uksi/2012/1075/made>
<http://www.legislation.gov.uk/uksi/2013/917/made>
<http://www.legislation.gov.uk/uksi/2014/1295/made>
<http://www.legislation.gov.uk/uksi/2015/1334/made>
<http://www.legislation.gov.uk/uksi/2015/1995/made>

This goes to discharging our duties under section 3 of the WT Act (see paragraph A5.7).

Proposal

A5.5 The Proposed Regulations would:

- 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.

A5.6 We have previously consulted, and made decisions, on the policy behind most of our proposed 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*"¹⁹ (the "December 2009 Consultation") published December 2009;
- our statement of December 2010 "*Fees for aeronautical radio licences, a statement*"²⁰ (the "December 2010 Statement");
- our consultation, "*Bespoke licence fees for aeronautical VHF communications frequencies, a further consultation*"²¹ published on March 2011 (the "March 2011 Consultation");
- our statement of June 2011, "*Bespoke licence fees for aeronautical VHF communications frequencies, a statement*"²² (the "June 2011 Statement");
- our consultation of September 2013, "*Spectrum Pricing: A framework for setting cost-based fees*"²³ (the "Spectrum Pricing Consultation");
- our statement of 17 March 2014, "*Spectrum Pricing: A framework for setting cost-based fees*"²⁴ (the "Spectrum Pricing Statement");

¹⁹ http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/summary/aip2.pdf

²⁰ http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/statement/statement.pdf

²¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/summary/condoc.pdf>

²² http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

²³ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/summary/condoc.pdf>

²⁴ <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*”²⁵ (the “MCWSDs Statement”);
- our statement of 25 September 2015 “*Licensing manually configurable white space devices*”²⁶ (the MCWSDs Statement).

The citizen and/or consumer interest

- A5.7 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and 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 telephony 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 proposing changes we have considered the wider impact beyond immediate stakeholders in the radiocommunications community. We believe that the proposals 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 should 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 would enable 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 would bring benefits to citizens and consumers earlier than would otherwise be the case. It would also mean that two different categories of WSDs could 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 proposals for the new Spectrum Access Offshore Mobile licence will provide stakeholders with

²⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/summary/manually-configurable-wsds.pdf>

²⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/summary/manually-configurable-wsds.pdf>

information to enable 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) We believe that the changes we are proposing to permit staged payments for Spectrum Access 28 GHz will allow 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

- A5.8 We have a number of duties under section 3 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 telephony.

- A5.9 Section 12 of the WT Act permits Ofcom to prescribe in regulations the sums payable in respect of wireless telephony licences other than those awarded by auction.

Options considered

- A5.10 Relevant policy decisions, together with additional information, can be found in the documents referred to in A5.6 above. Taking these into account, we consider that the principal options open to us in connection with the Proposed Regulations are:
- i) to make the Proposed Regulations; or
 - ii) to do nothing (not making the Proposed Regulations and maintaining the fees in the 2011 Regulations as amended).

Analysis of the different options

- A5.11 The following assesses the impact of options open to Ofcom by reference to the principal changes that would be made by the Proposed Regulations.

Make Proposed Regulations

- A5.12 The Proposed Regulations would have important benefits for all persons applying for a WT Act licence, including both domestic and overseas applicants, particularly in terms of increased transparency and legal certainty about the fees set for licence products.

Aeronautical licence classes

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

- A5.13 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.
- A5.14 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.
- A5.15 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.
- A5.16 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.
- A5.17 In conclusion, we considered 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.
- A5.18 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 Ofcom can respond quickly, as and when appropriate, during this period.
- A5.19 Our analysis explicitly recognised 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 proposals 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

- A5.20 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.
- A5.21 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).
- A5.22 We recognised 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.
- A5.23 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

- A5.24 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).
- A5.25 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.

A5.26 We have 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 proposals were intended 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

- A5.27 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 proposed fees for the local TV multiplex.
- A5.28 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 sites²⁷ 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 are apportioned to local TV.
- A5.29 By applying our proposed cost allocation methodology, we identified spectrum management costs for the local TV DTT multiplex of £23,900 in 2011/12.
- A5.30 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, and we will review this fee if we consider there is a significant misalignment with costs in the future.
- A5.31 We also noted that the Government made clear its objective to create and support 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.
- A5.32 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 proposed fees.

²⁷ 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.

- A5.33 As a result, we considered whether an adjustment to the proposed 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 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 occur²⁸. To this end, a range of measures were put into place by DCMS, Ofcom and the BBC to support local TV²⁹.
 - We do not believe that our proposed fee 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 note that the proposed fee was likely to be relatively low compared to the other costs incurred by a multiplex operator³⁰.
 - 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.
- A5.34 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 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.
- A5.35 We considered it appropriate to allow Comux UK a period of adjustment. We proposed 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.
- A5.36 We proposed 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). However, we decided to phase in the introduction of the fee in recognition of the award of the licence and future rollout of services.

²⁸ 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

²⁹ 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.

³⁰ 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)

- A5.37 The proposed 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.

Manually Configurable White Space Devices (MCWSUs)

- A5.38 Following on from our decision, as set out in the “*Licensing manually configurable white space devices*”³¹ (the “MCWSUs 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).
- A5.39 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 Statement³² of 12 February 2015. We therefore decided to proceed with arrangements to implement licensing of MCWSUs on a transitional basis at the set fee of £1,500 per annum.
- A5.40 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.
- A5.41 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 MCWSUs, there would be a risk that it would have the unintended and undesired effect of dis-incentivising the development of licence-exempt WSDs.
- A5.42 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

- A5.43 There are a number of costs associated with applying the MCWSUs 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.
- A5.44 However, we expect MCWSUs 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 MCWSUs.

³¹ http://stakeholders.ofcom.org.uk/binaries/consultations/manually-configurable-wsds/statement/Licensing_manually_configurable_white_space_devices.pdf

³² “*Implementing TV white spaces: Statement*”,
<http://stakeholders.ofcom.org.uk/binaries/consultations/white-space-coexistence/statement/tvws-statement.pdf>

- A5.45 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.
- A5.46 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.
- A5.47 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.
- A5.48 Ofcom will incur 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 proposed 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.
- A5.49 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

- A5.50 The requirement to obtain a licence to enable deployment of MCWSDs will impose some costs on the operators of such equipment in that they will 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 would 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.
- A5.51 Consequently, we have 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

- A5.52 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 believed that a standardised licence product was needed.
- A5.53 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 2014³³. Given the restricted non-protected nature of the licences we did not believe that a fee based on AIP would be appropriate.
- A5.54 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.
- A5.55 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

- A5.56 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.
- A5.57 However the Wireless Telegraphy (Licence Charges) (Amendment)(No2) Regulations 2015³⁴ (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 Proposed Regulations would 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

³³ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbframework/statement/CBFstatement.pdf>

³⁴ http://www.legislation.gov.uk/ksi/2015/1995/pdfs/ksi_20151995_en.pdf

Access 28 GHz licences set out in the 28 GHz Fees Regulations will remain unchanged.

Costs to Ofcom

- A5.58 There is a 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.
- A5.59 As previously explained in the preceding paragraphs, the most efficient route to compliance with our statutory obligations is to make the Proposed Regulations.

Do Nothing

- A5.60 The main alternative amongst the specific options open to us would be to do nothing.
- A5.61 By doing nothing, we mean not making the Proposed Regulations and maintaining the fees in the 2011 Regulations as amended for all relevant licence classes. This would mean that we would not incur the costs of making a statutory instrument. However, 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

- A5.62 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 Proposed Regulations would mean that the issue of spectrum scarcity continues not to be addressed.
- A5.63 The decision Ofcom made to adopt AIP for certain classes of Aeronautical licences is consistent with Ofcom's duties under section 3 of both the 2003 and the WT Act. Not giving effect to that decision by adopting the Proposed Regulations risks continued inefficient use of spectrum that would be inconsistent with our duties as set out in section 3 of the two Acts.

Local TV DTT Multiplex

- A5.64 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 2014³⁵. The fee increase proposed 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 the 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.
- A5.65 Therefore, not including the proposed fees in the Proposed Regulations would risk inefficient use of spectrum that would be inconsistent with our duties as set out in the 2003 and WT Acts.

³⁵ http://www.legislation.gov.uk/ksi/2014/1295/pdfs/ksi_20141295_en.pdf

MCWSDs

- A5.66 Not including the proposed fees for MCWSD licences in the Proposed Regulations, could create stakeholder uncertainty about the amount of fees payable. There will be no easily accessible way of determining the fees and payment frequency for MCWSDs licences.

Spectrum Access Offshore Mobile

- A5.67 Without the Proposed 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.

Spectrum Access 28 GHz

- A5.68 By doing nothing, Spectrum Access 28 GHz licensees will not benefit from the 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

- A5.69 In order to continue to meet our spectrum management duties, and in light of the assessments referred to above, our preferred approach is to implement the Proposed Regulations.
- A5.70 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.
- A5.71 For the reasons identified in the preceding paragraphs we consider the benefits of making the Proposed Regulations outweigh the costs. We therefore propose to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016.

Equality Impact Assessment

- A5.72 Following an initial assessment of our policy proposals we consider that it is reasonable to assume that any impacts on consumers and citizens arising from the Proposed Regulations would not differ significantly between groups or classes of UK consumers and citizens, all of whom would have access to these services, potentially at end-user prices reflective of all general input costs, including opportunity costs of spectrum used.
- A5.73 In addition, we note that there is no available evidence to suggest the decision to apply the further phases of charging or introduce fees would have a significantly

greater direct financial impact on groups including based on gender, race or disability or for consumers in Northern Ireland relative to consumers in general.

- A5.74 We do not consider that there is evidence to suggest that costs imposed on operators, would differ significantly by these aforementioned groups of consumers and citizens relative to consumers in general. This is because one would not expect the impact of supplying these consumers and citizens to differ significantly between these groups and 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.
- A5.75 We have not carried out a full Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality schemes at this stage. This is because we are not aware that the proposals being considered here are intended (or would, in practice) have a significant differential impact on different gender or racial groups, on consumers in Northern Ireland or on disabled consumers compared to consumers in general.

Annex 6

Draft Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016

STATUTORY INSTRUMENTS

2016 No.[]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016

Made - - - - - ***

Coming into force - - - ***

The Office of Communications (“OFCOM”), in exercise of the powers conferred by sections 12, 13(2) and 122(7) of the Wireless Telegraphy Act 2006^{(a)(b)} (the “Act”), make the following Regulations:

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) (Amendment) Regulations 2016 and shall come into force on [] 2016.

Amendment of the Wireless Telegraphy (Licence Charges) Regulations 2011

2. The Wireless Telegraphy (Licence Charges) Regulations 2011^(c) (“the principal Regulations”) shall be amended in accordance with the following provisions of these Regulations.

^(a) 2006 c.36

^(b) Sections 12, 13(2) and 122(7) were extended to the Bailiwick of Guernsey by article 2 of the Wireless Telegraphy (Guernsey) Order 2006 (S.I. 2006/3325); to the Bailiwick of Jersey by article 2 of the Wireless Telegraphy (Jersey) Order 2006 (S.I. 2006/3324); and to the Isle of Man by article 2 of the Wireless Telegraphy (Isle of Man) Order 2007 (S.I. 2007/278).

^(c) S.I. 2011/1128 as amended by S.I. 2012/1075, S.I. 2013/917, S.I. 2014/1295, S.I. 2015/1334 and S.I. 2015/1995.

Amendment of Regulation 4

3.—(1) Regulation 4 of the principal Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph 6—

- (a) in sub-paragraph (a) for “in respect of a licence under paragraph (1)” substitute “in respect of a licence under paragraph (1) or Regulation 7(1)”; and
- (b) in sub-paragraph (b)(iv) omit “or”;
- (c) in sub-paragraph (b)(v) after “Schedule 2;” insert “or”; and
- (d) after sub-paragraph (b)(v) insert—
 - “(vi)the class “Spectrum Access 28GHz under Regulation 7(1)”.

(3) In paragraph 7—

- (a) in sub-paragraph (a) for “prescribed sums are payable by that licensee under paragraph (1)” substitute “prescribed sums are payable by that licensee under paragraph (1) or Regulation 7(1)”; and
- (b) in sub-paragraph (b) for “at the same prescribed time in accordance with paragraph (1)” substitute “at the same prescribed time in accordance with paragraph (1) or Regulation 7(1)”.

Amendment of Schedule 2

4.—(1) Schedule 2 to the principal Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) Under the heading “**Aeronautical**”—

- (a) in relation to the licence class “Aeronautical Station (Aeronautical Broadcast)”—
 - (i) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3300, the sum payable is £3300”; and
 - (ii) for “exceeds £6000, the sum payable is £6000” substitute “exceeds £9900, the sum payable is £9900”.
- (b) in relation to the licence class “Aeronautical Station (Aircraft Communications Addressing and Reporting System)”—
 - (i) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3300, the sum payable is £3300”; and
 - (ii) for “exceeds £6000, the sum payable is £6000” substitute “exceeds £9900, the sum payable is £9900”.
- (c) in relation to the licence class “Aeronautical Station (Air/Ground, Aerodrome Flight Information Service and Tower)”—
 - (i) for “exceeds £600, the sum payable is £600” substitute “exceeds £3300, the sum payable is £3300”; and
 - (ii) for “exceeds £1900, the sum payable is £1900” substitute “exceeds £9900, the sum payable is £9900”.
- (d) in relation to the licence class “Aeronautical Station (Approach)”—
 - (i) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3300, the sum payable is £3300”; and
 - (ii) for “exceeds £6000, the sum payable is £6000” substitute “exceeds £9900, the sum payable is £9900”.
- (e) in relation to the licence class “Aeronautical Station (Area Control)”—
 - (i) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3300, the sum payable is £3300”; and

- (ii) for “exceeds £6000, the sum payable is £6000” substitute “exceeds £9900, the sum payable is £9900”.
 - (f) in relation to the licence class “Aeronautical Station (Very High Frequency Data Link)”—
 - (i) for “exceeds £6000, the sum payable is £6000” substitute “exceeds £9900, the sum payable is £9900”; and
 - (ii) for “exceeds £12000, the sum payable is £12000” substitute “exceeds £19800, the sum payable is £19800”.
- (3) Under the heading **“Broadcasting”** in relation to the licence class “Local TV DTT Multiplex” for “£11,950” substitute “£23,900”.
- (4) Under the heading **“Science and Technology”** after the entry for “High Duty Cycle Network Relay Points” add the following entry—

“Manually Configurable White Space Devices	£1500	12 months”
--	-------	------------

(5) Following the heading **“Science and Technology”** and the entries listed under that heading add the following heading and entry—

“Spectrum Access		
Spectrum Access Offshore Mobile	£5000	60 months”

[Date] [Name]
[] For and by the authority of the Office of Communications