

Notice of Ofcom's proposal to  
make a limitation order and amend  
the register regulations in  
connection with the award of  
spectrum in the 2.3 and 3.4  
GHz bands

Consultation

Publication date: 19 December 2016

Closing Date for Responses: 30 January 2017

## About this Document

This document provides notice of, and invites stakeholders' views on, Ofcom's proposal to make two statutory instruments in connection with the award of spectrum in the 2.3 GHz and 3.4 GHz bands. These are a limitation order and regulations amending The Wireless Telegraphy (Register) Regulations 2012.

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## Section 1

# Notice

## Summary

- 1.1 Ofcom is planning to award wireless telegraphy licences for equipment operating within the following spectrum bands (“the Bands”): 2350 to 2390 MHz (the “2.3 GHz band”); and 3410 to 3600 MHz (the “3.4 GHz band”).
- 1.2 In this regard, Ofcom recently published a notice of its proposal to make regulations setting out the process and rules for the award of licences to operate within the Bands (the “Award Regulations”).<sup>1</sup>
- 1.3 This document provides formal notice to stakeholders of Ofcom’s proposal to make two further statutory instruments in connection with this award. These are, respectively:
  - 1.3.1 The Wireless Telegraphy (Limitation of Number of Licences) Order 2017; and
  - 1.3.2 The Wireless Telegraphy (Register) (Amendment) Regulations 2017.
- 1.4 Subject to this consultation, Ofcom intends to make these two statutory instruments so that they come into force before the start of the bidding process to be set out in the Award Regulations.
- 1.5 A paper copy of the proposed statutory instruments may be obtained from John Glover, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

## Wireless Telegraphy (Limitation of Number of Licences) Order 2017

- 1.6 Ofcom is of the view that it is appropriate to limit the number of licences to be awarded in relation to the Bands for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Bands. Accordingly, under section 29 of the Wireless Telegraphy Act 2006 (the “Act”), it must make an order.
- 1.7 On 28 October 2015, Ofcom proposed to make such an order and issued a notice of its proposal, together with a draft of the order, entitled the Wireless Telegraphy (Limitation of Number of Licences) Order 2015.<sup>2</sup> This notice was published shortly after Ofcom published a statement in relation to competition and auction design issues for the award of the Bands.<sup>3</sup> Ofcom’s 2015 consultation on the draft order closed on 29 November 2015 and Ofcom received no responses to that consultation.
- 1.8 In light of market developments (including EE’s proposed acquisition by BT<sup>4</sup> and the proposed acquisition of O2 by H3G’s parent company CK Hutchison<sup>5</sup>), Ofcom

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/93546/award-of-the-spectrum-bands-regulations.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/93546/award-of-the-spectrum-bands-regulations.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/71657/limitation\\_order.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/71657/limitation_order.pdf)

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/71717/pssr-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/71717/pssr-statement.pdf)

<sup>4</sup> This was approved by the Competition & Markets Authority in January 2016.

decided to delay the award of the Bands and recently issued a further consultation regarding competition and auction design issues for the award.

- 1.9 For reasons of clarity, Ofcom has decided to re-issue its notice to make a limitation order. Ofcom is not proposing any substantive amendments to the draft order on which it consulted in 2015, but has updated relevant references. The limitation order will be referred to as The Wireless Telegraphy (Limitation of Number of Licences) Order 2017.
- 1.10 A draft of the proposed order is set out at Annex 4, and the general effect of this order is set out at Section 2 of this document.

### **Wireless Telegraphy (Register) (Amendment) Regulations 2017**

- 1.11 Ofcom is of the view that certain information relating to the licences awarded pursuant to the Award Regulations should be published and it has the statutory power to make regulations to implement this policy. Accordingly, Ofcom proposes to make The Wireless Telegraphy (Register) (Amendment) Regulations 2017.
- 1.12 A draft of the proposed regulations is set out at Annex 5, and the general effect of these regulations is set out at Section 3 of this document.

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<sup>5</sup> This was blocked by the European Commission in May 2016, although it is currently subject to an appeal.

## Section 2

# General effect of the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2017

### The legislative framework

- 2.1 Under section 29(1) of the Act, Ofcom may, if it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implemented Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the Authorisation Directive) (2002/20/EC).
- 2.2 Under section 29(2) of the Act, an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 2.3 Where Ofcom make an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to whom licences will be granted. Those criteria must be objectively justifiable, not unduly discriminatory, proportionate and transparent (section 29(4)).

### The proposed order

- 2.4 A draft of the proposed order is set out at Annex 4.
- 2.5 In relation to the award of licences for the 2.3 and 3.4 GHz bands, Ofcom is planning to grant a limited number of licences, depending on the outcome of the award process to be held under the Award Regulations. In making the Award Regulations, Ofcom is required under section 14(3B) of the Act to satisfy itself that the criteria to be taken into account in deciding whether or to whom to grant a licence specified in the Award Regulations are objectively justifiable, not unduly discriminatory, proportionate and transparent.
- 2.6 The proposed order consequently provides that Ofcom will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedure to be set out in the Award Regulations.
- 2.7 The frequencies to which the draft order relates include all of the frequencies available in the award process as set out in Schedule 1 to the draft Award Regulations.

## Section 3

# General effect of the proposed Wireless Telegraphy (Register) (Amendment) Regulations 2017

## The legislative framework

- 4.1 Under section 31(1) of the Act, Ofcom may, by regulations, make provision for the establishment and maintenance of a wireless telegraphy register. Under section 31(2) of the Act Ofcom may only include relevant information in the register if it is information of a description prescribed by regulations.
- 4.2 The proposed regulations amend the Wireless Telegraphy (Register) Regulations 2012 (S.I. 2012/2186)<sup>6</sup> (the "2012 Regulations") which provide that Ofcom shall establish and maintain a public register of relevant information to which those regulations apply and prescribe the relevant information.

## The proposed regulations

- 4.3 A draft of the proposed regulations is set out at Annex 5. The proposed regulations add a category of licences to the 2012 Regulations (those to be awarded at auction under the Award Regulations) for which information will be published on the register.
- 4.4 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns.

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<sup>6</sup> These are available at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by **5pm on 30 January 2017**.
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/notice-of-limitations-order-and-register-regulations-2.3-and-3.4-ghz-bands>. We also provide a cover sheet (<http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [john.glover@ofcom.org.uk](mailto:john.glover@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- John Glover  
Spectrum Group  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA
- email: [john.glover@ofcom.org.uk](mailto:john.glover@ofcom.org.uk)
- A1.5 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact John Glover on 020 7981 3878, or email [john.glover@ofcom.org.uk](mailto:john.glover@ofcom.org.uk).
- A1.6 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.
- A1.7 We welcome joint responses to this consultation.
- A1.8 It would be helpful if your response could include a direct answer to the question asked in this consultation document. The question is set out at Annex 3. 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.
- A1.9 If you want to discuss the issues and question raised in this consultation, please contact John Glover (whose contact details are provided at paragraphs A1.4 and A1.5 above).



## Confidentiality

- A1.10 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](http://www.ofcom.org.uk), as soon as we receive them.
- A1.11 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.
- A1.12 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.
- A1.13 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 <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a final copy of the limitations order at the same time as it publishes a final copy of the Award Regulations.
- A1.15 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details, please see <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at [consult@ofcom.org.uk](mailto: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.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

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

Tel: 020 7981 3601

Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

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

### Before the consultation

A2.1 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

A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 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.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 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.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

### After the consultation

A2.7 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.

## 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 3

# Consultation question

*Do you have any comments on the proposed order set out in Annex 4 and/or the proposed regulations set out in Annex 5?*

**Annex 4**

# Draft Wireless Telegraphy (Limitation of Number of Licences) Order 2017

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STATUTORY INSTRUMENTS

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**2017 No.**

## **ELECTRONIC COMMUNICATIONS**

### The Wireless Telegraphy (Limitation of Number of Licences) Order 2017

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 29(1) to (3) of the Wireless Telegraphy Act 2006<sup>(7)</sup> (the “Act”).

Before making the Order 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, commencement and extent**

**1.**—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2017 and shall come into force on [\*\*\*] 2017.

(2) This Order shall not extend to the Channel Islands or to the Isle of Man.

#### **Limitation of licences**

**2.**—(1) The Office of Communications (“OFCOM”) shall grant a limited number of wireless telegraphy licences for the use of frequencies in the following frequency bands in the United Kingdom—

- (a) 2350-2390 megahertz; and
- (b) 3410-3600 megahertz.

(2) In determining the number of licences to be granted for the use of frequencies in these frequency bands and the persons to who the licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2017.

Signatory text

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<sup>(7)</sup> 2006 c.36

Date *Name*  
Title  
For and by authority of the Office of Communications

**EXPLANATORY NOTE**

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

[To be completed after Notice]

**Annex 5**

# Draft Wireless Telegraphy (Register) (Amendment) Regulations 2017

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STATUTORY INSTRUMENTS

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**2017 No.**

## **ELECTRONIC COMMUNICATIONS**

### The Wireless Telegraphy (Register) (Amendment) Regulations 2017

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 31(1) and (2) of the Wireless Telegraphy Act 2006<sup>(8)</sup> (the “Act”).

Before making the 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 (Register) (Amendment) Regulations 2017 and shall come into force on [\*\*\*] 2017.

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

2. In Column 2 of Part 2 of Schedule 2 to the Wireless Telegraphy (Register) Regulations 2012<sup>(9)</sup>—
- (a) between “1785-1805 MHz” and “2500-2690 MHz”, insert “2350-2390 MHz”;
  - (b) for “3480-3500 MHz”, substitute “3410-3600 MHz”; and
  - (c) delete “3580-3600 MHz”.

Signatory text

Date \_\_\_\_\_ For and by authority of the Office of Communications  
*Name*  
*Title*

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<sup>(8)</sup> 2006 c.36

<sup>(9)</sup> S.I. 2012/2186, amended by S.I. 2013/640 and S.I. 2015/1400



**EXPLANATORY NOTE**

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

[To be completed after Notice]