



Decision to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016

Statement

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About this document

This statement relates to Ofcom's decision to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016 (the "Regulations"). The Regulations implement the fifth and final phased increase of fees for 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.

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Section 1

Summary

- 1.1 This statement presents our decision of 13 June 2016 to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2016 (the “Regulations”). This decision follows our recent Statutory Notice entitled “Notice of proposals to make the Wireless Telegraphy (Licence charges) (Amendment) Regulations 2016¹ (the “Notice”), which we published on 8 April 2016.
- 1.2 The Regulations set out the licence charges (fees) for some classes of wireless telegraphy licences issued by Ofcom under the Wireless Telegraphy Act 2006 (the “WT Act”), other than those awarded by auction. The Regulations will come into force on 27 June 2016 and amend the Wireless Telegraphy (Licence Charges) Regulations 2011² (the “2011 Regulations”).
- 1.3 The Regulations make changes to the 2011 Regulations reflecting Ofcom policy decisions made following earlier consultations, in accordance with our published consultation principles.
- 1.4 Unless stated in this document, all other fees remain unchanged from the 2011 Regulations. In summary, the Regulations 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 2011³ 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 statement⁴;
 - introduce fees for the Manually Configurable White Space Devices (MCWSD) as confirmed in our September 2015 statement⁵;

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

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

³ “Bespoke licence fees for aeronautical VHF communications frequencies, a statement” http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

⁴ “Spectrum Pricing: A framework for setting cost based fees”

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

- 1.5 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the WT Act, on 8 April 2016 we published the Notice setting out our proposal to make them. The Notice also contained a draft of the Regulations (the “Proposed Regulations”) and invited comments from stakeholders on whether the Proposed Regulations properly gave effect to the policy decisions on relevant licence fees that Ofcom had previously made.
- 1.6 We received one non-confidential response to the Notice. In accordance with section 122(4)(c) of the WT Act, we have considered the comments raised. After doing so, and for the reasons set out in this document, we have decided to adopt the Regulations as proposed subject to minor editorial amendments to rectify errors. Copies of the Regulations can be obtained through the National Archives⁶.

⁵ “*Licensing manually configurable white space devices*”

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

⁶ A link to the online version can be found at <http://www.legislation.gov.uk/>

Section 2

Background

Introduction

- 2.1 The Wireless Telegraphy Act 2006 (the “WT Act”) Act gives Ofcom the power to set fees. Under section 12 of the WT Act we must prescribe in regulations the sums payable in respect of wireless telegraphy licences other than those awarded by auction. Section 13 of that WT Act enables us in prescribing those fees to use ‘Administered Incentive Pricing’ (AIP), whereby prices for annual licence fees are set above administrative costs to reflect a range of spectrum management objectives⁷. This power goes to discharging a range of duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum (as well as our duty under section 3 of the Communications Act 2003 (the “2003 Act”) to secure optimal use of the spectrum).
- 2.2 In order to change the fees prescribed by existing regulations, we must either make a new set of regulations or amend the existing ones. We have decided to do the latter.

Statutory Notice

- 2.3 Under section 122(4) to (6) of the WT Act, we are required to publish a notice of any proposal to make regulations. The notice must state that Ofcom proposes to make the regulations in question, must set out their general effect, say where a copy may be obtained and give any person or party an opportunity to make representations about them.
- 2.4 We published the Notice, meeting the statutory requirements, on 8 April 2014. The Notice included a copy of the Proposed Regulations. The Notice gave any person or party who wished to do so until 10 May 2016 to make representations.
- 2.5 The Notice put forward the following changes to WT Act licence fees:
- implement the fifth and final phase of Administrative Incentive Pricing (AIP) set out through consultation and confirmed in our statement of June 2011⁸ 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));

⁷ Section 13(2) says, “OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.”

⁸ “Bespoke licence fees for aeronautical VHF communications frequencies, a statement”
http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

- 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 statement⁹;
- introduce fees for the Manually Configurable White Space Devices (MCWSD) as confirmed in our September 2015 statement¹⁰;
- 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.

2.6 We received 1 response to the Notice and this is detailed in the next section of this document.

⁹ "Spectrum Pricing: A framework for setting cost based fees"

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

¹⁰ "Licensing manually configurable white space devices"

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

Section 3

Scope of Regulations

Introduction

- 3.1 This section outlines the comments that we received to the Notice and our response to these. We also outline the final scope of the Regulations.
- 3.2 We received 1 non-confidential response. The response is published in full on our website¹¹. Following consideration of the response as outlined below, we have decided to proceed with our proposal to make the Regulations. We therefore have decided to adopt the Proposed Regulations subject to some minor editorial changes.

Stakeholders' response to the Notice and Ofcom's response

- 3.3 Gregg Smith raised concern that Section 3 of the Notice did not specify the intentions of the proposed changes. He felt that the fee increases in this area will needlessly increase the cost of vital safety systems, for reasons that were not specified in the Notice.
- 3.4 We would like to thank Mr Smith for his response. We believe that the intention of the proposed changes is a matter which was addressed in the Notice particularly within section 3, as explained in paragraphs 3.5 to 3.6 below. In addition, we have previously consulted, considered evidence, consultation responses, and made decisions in relation to the fee increases proposed (see paragraph A5.6 in the annex to the Notice). We are satisfied that we have specified and justified the reasons for such increases in the Notice.
- 3.5 Regarding the fee increases in the Aeronautical Station licences where we have decided to apply Administered Incentive Pricing (AIP), we believe that this will encourage more efficient use of the radio spectrum. We stated in the Notice that 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.
- 3.6 We concluded that this will generate net benefits for UK citizens and consumers. We decided to phase in fee increases to mitigate the transitional financial impacts that specific licensees may experience. We made the decision to implement a phasing scheme where fee increases are relatively small in the early years and proportionately greater in the later years. We determined 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. Consequently, this is the fifth and final phased increase in fees for the Aeronautical Station licences.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/licence-charges/?showResponses=true>

Final scope of Regulations

Ofcom's decision

- 3.7 On 13 June 2016, Ofcom made the Regulations as proposed save for minor editorial changes to rectify errors. The Regulations come into force on 27 June 2016. They are summarised below.

Extent of application

- 3.8 The Regulations apply in the United Kingdom, the Channel Islands and the Isle of Man, subject to formal adoption by the Island Authorities.

The Regulations

- 3.9 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.
- 3.10 Regulation 4 sets out the changes to Schedule 2 of the 2011 Regulations.
- 3.10.1 Regulation 4(2)(a) to (f) amends fees for the aeronautical licence classes, introducing the fifth and final phased increase in fees;
 - 3.10.2 Regulation 4(3) amends the fees for the Local TV DTT Multiplex licence class, introducing the second and final phase increase in fees;
 - 3.10.3 Regulation 4(4) introduces annual charges of £1,500 for a Manually Configurable White Space Devices licence; and
 - 3.10.4 Regulation 4(5) introduces a fee of £5,000 payable every 5 years for a Spectrum Access Offshore Mobile licence.

Annex 1

Respondents

Gregg Smith