



Regulatory Impact Assessment
for the Wireless Telegraphy
(Exemption) (Amendment)
Regulations 2016

Issued:

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Section 1

Regulatory Impact Assessment

Introduction

- 1.1 In accordance with Government practice, where a statutory regulation is made, a Regulatory Impact Assessment ("RIA") must be undertaken.
- 1.2 The analysis presented here, represents an RIA as defined by section 7 of the Communications Act 2003 (the "Comms Act") for the Wireless Telegraphy (Exemption) (Amendment) Regulations 2016 (the "Amendment Regulations").
- 1.3 RIAs 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 and are commonly used by other regulators. This is reflected in section 7 of the Comms Act, which means that we will generally carry out impact assessments where 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.
- 1.4 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. In accordance with section 7 of the Comms Act, in producing this RIA, we have had regard to such general guidance as we consider appropriate including related Cabinet Office guidance. 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

- 1.5 In the UK, Ofcom is responsible for authorising civil use of the radio spectrum and achieve this by granting wireless telegraphy licences under the Wireless Telegraphy Act 2006 (the "WT Act") and by making regulations exempting users of particular equipment from the requirement to hold such a licence. Under section 8(1) of the WT Act, it is an offence to install or use equipment to transmit without holding a licence granted by us, unless the use of such equipment is exempted. However, under section 8(4) of the WT Act, we have to make regulations to exempt equipment if its installation or use is not likely to:
 - involve undue interference with wireless telegraphy;
 - have an adverse effect on technical quality of service;
 - lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - endanger safety of life;
 - prejudice the promotion of social, regional or territorial cohesion; or
 - prejudice the promotion of cultural and linguistic diversity and media pluralism.

- 1.6 In accordance with the requirements of section 8(3B) of the WT Act, the terms, provisions and limitations specified in the regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.

Proposal

- 1.7 This impact assessment relates to the decision to make the Amendment Regulations by amending the Wireless Telegraphy (Exemption) Regulations 2003 (the “Principal Regulations”). This is to make a small change to provisions relating to the use of wireless apparatus that connects to a telecommunication service and is used to provide services by way of business to another person.
- 1.8 An example of one of these devices is a mobile Gateway (“Gateway”)¹. This is a device incorporating one or more SIM cards created and issued by a mobile network operator (MNO), which allows the device on which the SIM card is installed, to originate calls on that MNO’s network. As a result, calls from fixed lines to mobile networks are treated by the recipient’s network as if they were made by a mobile phone using that SIM card in the gateway, rather than made from the fixed line phone. This means the cost of the call is reduced. Gateways may be used in different ways:
- a) by a single customer to use in its own business (‘a self-use gateway’); or
 - b) where electronic communications services are provided by way of a business to:
 - (i) a single end user so that all the calls diverted through the gateway come from one user - a commercial single user gateway (a ‘COSUG’); or
 - (ii) multiple end users so that the calls diverted through the Gateway come from more than one end user - a Commercial Multi-User Gateway (a ‘COMUG’).
- 1.9 Regulation 4 (2) of the Principal Regulations provides an exception to the exemption set out in Regulation 4 (1): namely, that the exemption shall not apply to relevant apparatus which is established, installed or used to provide or to be capable of providing a wireless telegraphy link between electronic communications apparatus or an electronic communications network and other such apparatus or system, by means of which an electronic communications service is provided by way of business to another person.
- 1.10 The effect of this exception, as provided for in the Principal Regulations, is that Gateways are exempted from the obligation to obtain a licence but only to the extent set out in regulation 4: so there is a restriction in those Regulations on the use of

¹ Mobile Gateways, also known as SIM Gateways or GSM Gateways. Since the first use of these with GSM networks, additional spectrum and technologies have come into use that might be accessed via a Gateway.

Gateways by way of business to another person.² As such this restriction applies to both COSUGs and COMUGs.

- 1.11 This restriction in the Principal Regulations, insofar as it applied to COSUGs (only) was found to be in breach of the Authorisation Directive and constituted an infringement of EU law. This was confirmed on appeal.
- 1.12 The Amendment Regulations will give legislative effect to the decision of the Court in Recall Support Services and Others v Secretary of State for Culture Media and Sport (2013, EWHC 3091 (Ch)), confirmed by the Court of Appeal (2014 EWCA Civ 1370) in regards to commercial single user gateways (COSUGs).

The citizen and/or consumer interest

- 1.13 Our principal duty under section 3 of the Comms 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 telegraphy of spectrum and have regard to the principle under which all regulatory activities should be targeted only at cases in which action is needed.

Equality Impact Assessment

- 1.14 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation— an Equality Impact Assessment (EIA) is our way of fulfilling these obligations.
- 1.15 Following an initial assessment of our policy proposals and decision we considered that it was reasonable to assume that any impacts on consumers and citizens arising from the Amendment Regulations in most cases 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. We have not identified any particular impact in relation to the identified equality groups and we do not envisage that the Amendment Regulations are likely to be to the detriment of any group in society. Nor have we seen the need to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependants. This is because we anticipate that our proposals will not have a differential impact in Northern Ireland compared to consumers in general.

Our policy objective

- 1.16 We seek wherever possible, to reduce the regulatory burden upon our stakeholders, in this instance users of the radio spectrum. One way in which we can do this is to remove the need for spectrum users to apply for individual licences to authorise the use of radio equipment. Exemption is realised by describing the details of equipment and the parameters under which it may be used in a Statutory Instrument (secondary

² This use refers to a person providing a Gateway to another person as part of a service provided under a commercial arrangement to that other person; (Recall Support case Court of Appeal decision [2014] EWCA Civ 1370)

legislation called Regulations) that exempts users of such equipment from the need to hold a licence provided they comply with the terms of the regulations.

- 1.17 The Amendment Regulations give legislative effect to the decision of the Court in *Recall Support Services and Others v Secretary of State for Culture Media and Sport* (2013, EWHC 3091 (Ch)), confirmed by the Court of Appeal (2014 EWCA Civ 1370) in regards to commercial single user gateways.

Options considered

- 1.18 The options considered in relation to compliance with the court's decision were as follows:
- to make the Amendment Regulations that are in line with the court's judgment; or
 - to do nothing.

Analysis of options

Make new regulations

- 1.19 Generally, licence exemption presents the lowest barrier to entry compared with other forms of authorisation, such as individual licences. Our analysis takes this proposition as a starting point and then assesses concerns over harmful interference or congestion to existing users (if any) or potential new users of the band. Harmful interference or congestion could negate the benefits of any reductions in the regulatory burden gained from exemption.
- 1.20 Overall we believe that costs to business are likely to be lower under a licence-exempt approach than the requirement for users to obtain individual licences. Licence exemption represents the least cost regulatory approach to authorisations on the use of spectrum. For example if use of spectrum is authorised through a licence, businesses face administrative costs associated with applying for the licence and the cost of the licence itself.
- 1.21 There are one-off administrative costs associated with making Statutory Instruments. We considered the implementation costs to be low, both in absolute terms and in comparison to licensing alternatives that might require an auction or the maintenance of a licence scheme. Moreover, the costs such as they are will also be offset by the benefits to businesses and consumers. There may also be a slight reduction in spectrum management costs in certain areas through licence exemption.

Do nothing

- 1.22 The alternative to making the Amendment Regulations would be to do nothing. By doing nothing, we mean not making the regulations and therefore not giving effect to the court's judgment. However, Ofcom has a legal obligation to implement the law and comply with it. As such, we consider that doing nothing is not a valid option. If we did not implement the court's decision, there is also a risk of legal proceedings, the costs of which we deem to be potentially very high both quantitatively and qualitatively, outweighing any costs we consider to be associated with correct implementation.

The preferred option

1.23 Accordingly, we have decided to go ahead and make the Amendment Regulations.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

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