



Decision to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014

Statement

Publication date:

17 June 2014

About this document

The Wireless Telegraphy Act 2006 gives Ofcom the power to set fees for wireless telegraphy licences in the UK. Many services, including broadcasting, radio and mobile phones are included under the remit of the Act.

This document explains Ofcom's decision to amend existing Wireless Telegraphy Regulations, following a consultation published on 27 March 2014. The amendments explained in this document relate to changes to fees for Aeronautical, Broadcasting and Fixed Link wireless telegraphy licences issued by Ofcom. They also reflect the liberalisation of spectrum rights of use for the Public Wireless Networks (2G and 3G) in Guernsey, Jersey and the Isle of Man.

Contents

Section		Page
1	Summary	3
2	Background	5
3	Scope of Regulations	7
Annex		Page
1	Respondents	10

Section 1

Summary

- 1.1 This statement presents our decision of 21 May 2014 to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014 (SI 2014/1295) (the “Regulations”)¹. This decision follows our recent Statutory Notice entitled “Notice of proposals to make the Wireless Telegraphy (Licence charges) (Amendment) Regulations 2014”² (the “Notice”), which we published on 27 March 2014.
- 1.2 The Regulations came into force on 1 June 2014 and amend the Wireless Telegraphy (Licence Charges) Regulations 2011³ (the “2011 Regulations”) to reflect Ofcom policy decisions made following earlier consultations. The Regulations set out the changes to licence charges (fees) for certain classes of wireless telegraphy licences issued by Ofcom under the Wireless Telegraphy Act 2006 (the “WT Act”), other than those awarded by auction. In addition, the Regulations reflect the liberalisation of spectrum rights of use for the Public Wireless Networks (2G and 3G) in Guernsey, Jersey and the Isle of Man.
- 1.3 Unless stated in this document, all other fees remain unchanged from the 2011 Regulations. In summary, the Regulations make the following changes:
- implement the third phase of Administered Incentive Pricing (AIP), as set out through consultation and confirmed in our statement of June 2011⁴ for the following aeronautical licence classes (please note that these licences will not be issued in relation to stations in Jersey, Guernsey and Isle of Man):
 - 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)).
 - introduce the new fee rates for Point to Point Fixed Links in the bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz confirmed in our December 2013⁵ statement.

¹ <http://www.legislation.gov.uk/ukxi/2014/1295/contents/made>

² <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-fees-notice/>

³ <http://www.legislation.gov.uk/ukxi/2011/1128/made/data.pdf>

⁴ “Bespoke licence fees for aeronautical VHF communications frequencies, a statement”
http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

⁵ “Statement on the future management approach for the 71-76 GHz and 81-86 GHz bands”
<http://stakeholders.ofcom.org.uk/binaries/consultations/70-80ghz-review/statement/statement.pdf>

- introduce fees for the following Broadcast licences as confirmed in our March 2014 statement⁶ which have not previously been charged for:
 - National Digital Terrestrial Television (DTT) multiplexes;
 - Local Television DTT multiplex; and
 - Northern Ireland DTT multiplex.
- We also made editorial changes to the Public Wireless Networks (2G and 3G) in Guernsey, Jersey and the Isle of Man with no fee change.

1.4 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the WT Act, on 27 March 2014 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.

1.5 We received four non-confidential responses 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 some amendments, the details of which can be found in section 3). Copies of the Regulations can be obtained using the link below⁷.

⁶ “*Spectrum Pricing: A framework for setting cost based fees*”

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

⁷ A link to the online version can be found at

<http://www.legislation.gov.uk/ukxi/2014/1295/contents/made>

Section 2

Background

Introduction

- 2.1 The Wireless Telegraphy Act 2006 (the “WT Act”) gives Ofcom the power to set fees for wireless telegraphy licences granted under the WT Act. 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 the WT Act permits 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 objectives⁸. 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, set out their general effect, state 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 27 March 2014. The Notice included a copy of the Proposed Regulations. The Notice gave any person or party who wished to do so until 28 April 2014 to make representations.
- 2.5 The Notice proposed the following changes to WT Act licence fees:
- implementation of the third phase of AIP for the following aeronautical licence classes:
 - 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)).

⁸ Section 13(2) states, “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.”

- introduction of new fee rates for Point to Point Fixed Links in the bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz.
- introduction of fees for the following Broadcast licences which have not previously been charged for:
 - National Digital Terrestrial Television (DTT) multiplexes;
 - Local Television DTT multiplex; and
 - Northern Ireland DTT multiplex.
- editorial changes to reflect technological neutrality in the following licence classes:
 - Public Wireless Networks (2G and 3G Cellular Operator – Guernsey);
 - Public Wireless Networks (2G and 3G Cellular Operator – Jersey); and
 - Public Wireless Networks (2G and 3G Cellular Operator – Isle of Man).

2.6 We received four responses to the Notice and these are detailed in the next section of this document.

Section 3

Scope of Regulations

Introduction

- 3.1 This section outlines the comments that we received in relation to the Notice and our responses to these. We also outline some further amendments that have been made and describe the final scope of the Regulations.
- 3.2 We received four non-confidential responses. These responses are published in full on our website⁹. Following consideration of the responses, as outlined below, we have decided to proceed with our proposal to make the Regulations making the amendments as indicated. We therefore have decided to adopt the Proposed Regulations (subject to some minor changes).

Stakeholders' responses to the Notice

- 3.3 NATS provided two responses to the Notice. In its first response, NATS noted that we stated in the RIA that we expected any increase in licence fees to be likely to be passed through to airlines. It highlighted the uncertainty of the costs being passed through to airlines in light of the arrangements between the UK and Irish Republic in relation to UK-Ireland Functional Airspace Block (FAB) Plan for Reference Period 2 (2015-19)¹⁰.
- 3.4 NATS also commented on section 4 of the 2011 Regulations, which allows payments of some licence classes by monthly instalments. NATS noted that this facility was available only for the licence classes specified in section 4, where the annual payment due in respect of those licences exceeds £100,000, either for a single licence or a combination of licences within the same class. NATS wondered if this concession, which allows licensees to pay fees by monthly instalments, could be extended to the relevant aeronautical licence classes, in the event that the level of combined fees due annually exceeds £100,000. It proposed an amendment to Schedule 2 of the 2011 Regulations to allow this facility for aeronautical licences.
- 3.5 In a separate response, NATS identified what it believed to be an error in the drafting of the Proposed Regulations. It referred to paragraph 4.19 of our statement "Bespoke licence fees for aeronautical VHF communications frequencies"¹¹ published on 7 June 2011 (the "2011 Statement"). It referenced a table that showed a category of licence, Aeronautical Station (Air/Ground, Aerodrome Flight Information Service (AFIS) and Tower) with a DOC of 10 nautical miles/3000 feet, which had a different fee cap. It pointed out that from 2014/15 the fee cap was £650 and would remain unchanged in further years. NATS advised that this was not reflected in our regulations.
- 3.6 Sure and Manx Telecom both agreed with our proposal to amend the names of the Public Wireless Network licence classes in respect of the Islands. Manx Telecom

⁹ <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-fees-notice/?showResponses=true>

¹⁰ <http://www.caa.co.uk/application.aspx?catid=14&pagetype=65&appid=7&mode=detail&nid=2339>

¹¹ http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

added that this is a positive step, which will provide additional flexibility in the efficient utilisation of these spectrum resources.

Ofcom's response

- 3.7 We note NATS's comments about its cost model and the uncertainty over the apportionment of certain of its costs. However, we believe that the analysis that accompanied the AIP statement remains valid. If any business faces increased costs, it can absorb those costs, make cost savings or it can recoup those costs from its customers (or a combination of these).
- 3.8 The purpose of the Notice was to implement changes in fees on which Ofcom had previously consulted. The point raised by NATs on the instalment payment facility for aeronautical licences has not been consulted on; therefore Ofcom will not be implementing this suggestion in the Regulations. However, we recognise that, once the fifth and final phase of AIP has been implemented, the maximum fee for an assignment under an aeronautical radio licence will be £9,900. It is consequently possible that one or two aeronautical radio licensees could face an annual bill that exceeds the £100,000 threshold. We agree in principle, therefore, that the concession to pay by instalments could be extended to aeronautical licence classes. We will consider this issue further, examining the potential wider policy implications (for example for other classes of licences) and the practicalities of implementation. For these reasons, we cannot take a decision on this in the timeframe for making these regulations.
- 3.9 We note NATS's comments regarding the fee cap in our 2011 Statement. However, we would stress that the table in paragraph 4.19 was purely by way of illustration, to reassure stakeholders that, for a DOC of 10/30 (which is typical for a small airfield), the future fee would not rise beyond a particular ceiling. The resultant fee for a 10/30 DOC using the fees algorithm will not exceed the levels in that illustrative top row in Table 1 of paragraph 4.19. The fee ceilings for the purposes of the legislation are phased following the lower two rows.

Amendments to Regulations

- 3.10 We have made a small drafting amendment to the Proposed Regulations. For Point to Point Fixed Links (71.125 – 73.125GHz and 81.125 – 83.125GHz), we changed the new entry from “£225 for each 250MHz of bandwidth for channels of more than or equal to 250MHz” to “£225 for each 250MHz of bandwidth within a channel, where the channel has a bandwidth of 250MHz or more”. This amendment was made to make the fee changes in relation to Fixed Links easier to understand.

Channel Islands and Isle of Man

- 3.11 The Regulations reflect the decisions taken by the authorities in Jersey, Guernsey and the Isle of Man not to have Aeronautical licence fees which are based on AIP. Stations operating in these jurisdictions will continue to be issued with Aeronautical Ground Station licences, which are retained in the 2011 Regulations and charged on a cost recovery basis.

Final scope of Regulations

Ofcom's decision

- 3.12 On 21 May 2014 Ofcom made the Regulations as proposed, subject to the changes described in paragraph 3.10. The Regulations came into force on 1 June 2014. They are summarised below.

Extent of application

- 3.13 The Regulations apply in the United Kingdom, the Channel Islands and the Isle of Man, subject to formal adoption by the Island Authorities. However, as mentioned in paragraph 3.11, the Aeronautical Station licence classes will not be issued for those stations in the Guernsey, Jersey or the Isle of Man.

The Regulations

- 3.14 Regulation 3 sets out the changes to Schedule 2 of the 2011 Regulations;
- 3.14.1 (2)(a) to (f) introduces the third phase of fee increases with respect to the aeronautical licence classes identified;
 - 3.14.2 (3) introduces charges for the following Broadcast licences which have not previously been charged for:
 - National DTT multiplexes;
 - Local Television DTT multiplex; and
 - Northern Ireland DTT multiplex;
 - 3.14.3 (4) introduces new fee rates for Point to Point Fixed Links in the bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz; and
 - 3.14.4 (5) removes references to 2G and 3G technologies in the following Licence classes:
 - Public Wireless Networks (2G and 3G Cellular Operator – Guernsey);
 - Public Wireless Networks (2G and 3G Cellular Operator – Jersey); and
 - Public Wireless Networks (2G and 3G Cellular Operator – Isle of Man);

Annex 1

Respondents

NATS

Manx Telecom

Sure