



Notice of proposal to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014

Consultation

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Section 1

Executive summary

- 1.1 This document consults on draft regulations, the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014 (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 telegraphy licence other than those awarded by auction.
- 1.2 The Proposed Regulations will implement changes on which we have previously consulted and published our decision. Therefore in response to this consultation we are only seeking comments on whether the Proposed Regulations correctly implement Ofcom policy decisions.
- 1.3 Unless stated in this document, all other licence charges would remain unchanged from the 2011 Regulations. In summary, the Proposed Regulations would make the following changes:
- implement the third 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)).
 - 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 2013³ statement.
 - introduce fees for the following Broadcast licences as confirmed in our March 2014 statement⁴ which have not previously been charged for:
 - National Digital Terrestrial Television (DTT) multiplexes;

¹ <http://www.legislation.gov.uk/ukxi/2011/1128/made/data.pdf>

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 “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>

⁴ “Spectrum Pricing: A framework for setting cost based fees”
<http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/statement/CBFstatement.pdf>

- Local Television DTT multiplex; and
- Northern Ireland DTT multiplex.

1.4 Additionally, we intend to reflect the liberalisation of spectrum rights of use by making editorial changes to:

- remove reference 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).

1.5 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 28 April 2014**. Subject to consideration of responses we intend to bring the new Regulations into force by June 2014. 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 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 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.
- 2.2 The WT Act enables us to recover the cost of managing WT Act licences by prescribing regulations under section 12 but, under section 13, it also permits the use of market mechanisms. For non-auctioned spectrum, the WT Act permits us to use Administered Incentive Pricing (AIP) and 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. 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. However, cost based fees are fees set at a level which reflects the costs we incur in connection with our radio spectrum functions.
- 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 Telegraphy (Licence Charges) (Amendment) Regulations 2014 (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 Unless stated in the following sections, all existing licence charges will remain the same. This consultation concerns whether the Proposed Regulations correctly give effect to a range of policy decisions previously consulted upon. We therefore seek responses to this consultation only in that respect and not on the underlying policy decisions we have already made.

Document structure

- 2.7 The document is structured as follows:
 - Section 3 contains the proposals for the changes to licence charges;
 - Section 4 sets out the general effects of the Proposed Regulations;
 - Annexes 1 to 3 provide information on our approach to consultation;

- Annex 4 provides a summary of 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 regulations. Those who wish to do so have until 5pm on 28 April 2014 to make representations on our proposal. We expect to release a statement on this consultation by June 2014, having taken responses into account, and to bring the regulations into force by June 2014.

Section 3

Proposed changes

3.1 The following section outlines our proposals to change the 2011 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)).
- Point to Point Fixed Links in the bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz
- Broadcasting
 - National DTT multiplexes;
 - Local Television DTT multiplex; and
 - Northern Ireland DTT multiplex.
- We also intend to make editorial changes to the Public Wireless Networks (2G and 3G) in Guernsey, Jersey and the Isle of Man with no fee change.

Aeronautical station licences

3.2 In 2012 we introduced 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 will 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 and this cap will be progressively increased until 2016. The Proposed Regulations will implement the

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

third year phased increase. The changes to the caps for various licence products are set out in Table 1.

Table 1: 2014 Change in the maximum level of bespoke fees for aeronautical licences.

Licence class	Channel	2012/13	2013/14	2014/2015
Aeronautical Station (Air/Ground, AFIS & Tower)	8.33 kHz	£100	£150	£400
	25 kHz	£350	£500	£1200
Aeronautical Station (Approach)	8.33 kHz	£300	£650	£1000
	25 kHz	£1000	£2000	£3000
Aeronautical Station (Aeronautical Broadcast)	8.33 kHz	£300	£650	£1000
	25 kHz	£1000	£2000	£3000
Aeronautical Station (ACARS)	8.33 kHz	£300	£650	£1000
	25 kHz	£1000	£2000	£3000
Aeronautical Station – Area Control	8.33 kHz	£300	£650	£1000
	25 kHz	£1000	£2000	£3000
Aeronautical Station (VDL)	25 kHz	£1000	£2000	£3000
	50 kHz	£2000	£4000	£6000

Fixed Links

- 3.4 On 21 August 2013 Ofcom published a consultation “*Review of the Spectrum Management Approach in the 71-76 GHz and 81-86 GHz bands*”⁶ proposing changes to the management and authorisation approach within the 71 to 76 GHz and 81 to 86 GHz (70/80GHz) bands. On 16 December 2013 Ofcom published a statement “*Statement on the future management approach for the 71-76 GHz and 81-86 GHz band*” (the “70/80 GHz Statement”)⁷ setting out its decision to apply a mixed management approach for the 70/80 GHz band by making the 71.125 to 73.125 GHz and 81.125 to 83.125 GHz portions of the bands available for Point to Point Fixed Links under an Ofcom Co-ordinated approach.
- 3.5 In the 70/80 GHz Statement, we outlined our decision to apply interim licence fees for the (Ofcom Co-ordinated) Point to Point Fixed Links bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz subject to a forthcoming Fixed Link Fees Review. Noting and taking into account the requirement raised by stakeholders for the need for certainty and stability in the 70/80 GHz band fees the interim fees will apply for a period of 5 years from the date of publication of the 70/80 GHz Statement (16

⁶ <http://stakeholders.ofcom.org.uk/consultations/70-80ghz-review/>

⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/70-80ghz-review/statement/statement.pdf>

December 2013), irrespective of any upward change from the Fixed Link Fees Review. However should the Fixed Link Fees Review result in a decrease in annual fees for the 70/80 GHz band, then there would be a transition to the new fees regime as developed by the Fixed Link Fees Review. The annual charge and payment interval for fees for all Self Co-ordinated Links is to remain unchanged at £50.

3.6 In the 70/80 GHz Statement, it was decided that the applicable interim fee for Point to Point Fixed Links in the 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands will be:

- paid on an annual basis;
- a minimum of £100 for permitted channel sizes which are less than 250 MHz; and
- pro-rated at £225 per 250 MHz of bandwidth for channel sizes of more than or equal to 250 MHz.

3.7 Although we have not introduced channel sizes larger than 1000 MHz in the Ofcom Co-ordinated block, should we decide to make these available based on market demand prior to the conclusion of the Fixed Link Fees Review, pro-rated fees as described in 3.6 above will also apply to the larger channels based on the 250 MHz fee.

3.8 The Proposed Regulations will implement our decision in the 70/80 GHz statement. An example of the proposed fees for Point to Point Fixed Links in bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz is set out in Table 2 below.

Table 2: Proposed fee levels for Point to Point Fixed Links in 71.125 to 73.125 GHz and 81.125 to 83.125 GHz

Channel Size ranges (MHz)	Pro-rated Interim Fee
<250	£100
250	£225
500	£450
750	£675
1000	£900

Broadcasting

3.9 On 13 September 2013 Ofcom published a consultation on “*Spectrum Pricing: A framework for setting cost based fees*”⁸ proposing a framework for setting WT Act

⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfframework/summary/condoc.pdf>

fees for spectrum licences which are cost based, and making specific proposals for setting WT Act fees for DTT multiplexes⁹.

3.10 On 17 March 2014, Ofcom published a statement “*Spectrum Pricing: A framework for setting cost based fees*”¹⁰ 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 confirms our decision to implement the following WT Act fees for DTT multiplex services, to be payable from 2014 on the anniversary of their licence commencement dates:

- National DTT multiplexes - £188,000 per annum;
- Local TV DTT multiplex – fee will be phased in and set at £11,950 per annum for the first two years (2014-2015), then at £23,900 per annum from 2016; and
- Northern Ireland DTT multiplex - £3,360 per annum.

Table 3: Proposed fees for DTT multiplex services

Licence class	Proposed annual WT Act fee	Date of fee commencement (from 2014)	Comments
National DTT multiplexes	£188,000	Mux 1 (BBC) – 17 October Mux 2 (Digital 3&4) – 20 December Mux A (SDN) – 14 November Mux B (BBC) – 16 November Mux C (Arqiva) – 20 November Mux D (Arqiva) – 20 November	First payment due 2014 on the anniversary of licence commencement.
Local TV multiplex	£23,900	26 November	Fee phased in and set at £11,950 pa (50%) in 2014 and 2015; £23,900 pa (100%) from 2016
Northern Ireland multiplex	£3,360	24 October	First payment due 2014. DCMS advise they will fund these WT Act fees

Public Wireless Networks

3.11 On 1 July 2013, the Communications Commission (the “Commission”) in the Isle of Man published a consultation¹¹ on proposals to licence the provision of 4G mobile communications services in the Isle of Man. The Commission also considered whether it should, in conjunction with Ofcom, liberalise spectrum rights of use in all

⁹ 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).

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbframework/statement/CBFstatement.pdf>

¹¹ “Consultation on the Licensing of 4G Mobile Services and Notice of Proposed Modification to Existing Licences” <http://www.gov.im/lib/docs/cc/consultations/consultationonthelicensingof4g.pdf>

bands. This would mean that all the bands would be freed from service and technology restrictions, leaving operators free to make their own operational choices regarding which services to provide in which bands.

- 3.12 In order to facilitate technology neutrality, we propose to amend the 2011 Regulations to remove references to specific technologies (2G and 3G), while leaving the level of fees unchanged.
- 3.13 We are aware that the Channel Islands Competition and Regulatory Authorities (CICRA)¹² has similarly consulted¹³ on 4G awards and licence liberalisation for Jersey and Guernsey. We therefore propose to align the text of the Proposed Regulations with that described above for the Isle of Man in order to facilitate licensing of 4G in the Channel Islands after their Telecommunications Act award process concludes.

¹² The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) are together referred to as CICRA and unless otherwise stated, all references to CICRA in this document are to each of the JCRA and GCRA

¹³ *"Pan-Channel Island Second Consultation on award of 800 MHz and 2.6 GHz Spectrum"*
<http://www.cicra.gg/files/13-54%20second%20spectrum%20consultation.pdf>

Section 4

General effect of the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014

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.
- 4.6 Regulation 3 sets out the changes to Schedule 2 of the 2011 Regulations;
 - 4.6.1 (2)(a) to (f) amends the aeronautical licence classes introducing the third phased increase of fees;
 - 4.6.2 (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;
 - 4.6.3 (4) introduces new fee rates for Point to Point Fixed Links in the bands 71.125 to 73.125 and 81.125 to 83.125 GHz; and

- 4.6.4 (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);

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 28 April 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/wireless-telegraphy-fees-notice/> 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 020 783 4650.

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 by June 2014.
- 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 Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@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 Telegraphy 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 Telegraphy (Licence Charges) (Amendment) Regulations 2014.

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 The analysis in this annex, together with that elsewhere in this document and 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 2014 (the “Proposed Regulations”). Impact assessments are defined in section 7 of the Communications Act 2003 (the “2003 Act”). As the impact of the policy decisions that would be implemented by the Proposed Regulations has already been assessed in the other documents referred to, a separate impact assessment for the Proposed Regulations may not strictly be necessary. We nevertheless include this annex, which summarises the earlier, fuller assessments, as a matter of good practice.
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 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

- A5.4 This impact assessment relates to our proposal to update the regulations that prescribe charges for wireless telegraphy licences. We are proposing to make the Proposed Regulations that would amend the Wireless Telegraphy (Licence Charges) Regulations 2011 (SI 2011/1128)¹⁴ (the “2011 Regulations”). The Proposed Regulations would maintain a number of the charges prescribed by the 2011 Regulations, but would also create new charges and amend a number of existing charges.
- A5.5 Under section 12 of the WT Act, Ofcom may prescribe in regulations the sums payable in respect of wireless telegraphy 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. This goes to discharging our duties under section 3 of the WT Act.

¹⁴ <http://www.legislation.gov.uk/uksi/2011/1128/made/data.pdf>

Proposal

A5.6 The Proposed Regulations would:

- i) implement the third phase of a five year programme of fee changes for some Aeronautical Station licence classes;
- ii) implement our policy decision to introduce interim fees in Point to Point Fixed Links bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz;
- iii) introduce cost based fees for digital terrestrial television (DTT) broadcasting licences (these are: the national DTT multiplexes, local television DTT multiplex and Northern Ireland DTT multiplex); and
- iv) remove references to specific technologies (2G and 3G) for Public Wireless Networks, while leaving the level of fees unchanged.

A5.7 We have previously consulted, and made decisions, on the policy behind all 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*”¹⁵ (the “December 2009 Consultation”) published December 2009;
- our statement of December 2010 “*Fees for aeronautical radio licences, a statement*”¹⁶ (the “December 2010 Statement”);
- our consultation, “*Bespoke licence fees for aeronautical VHF communications frequencies, a further consultation*”¹⁷ published on March 2011 (the “March 2011 Consultation”);
- our statement of June 2011, “*Bespoke licence fees for aeronautical VHF communications frequencies, a statement*”¹⁸ (the “June 2011 Statement”);
- our consultation of August 2013, “*Review of the Spectrum Management Approach in the 71-76 GHz and 81-86 GHz bands*”¹⁹ (the “70/80 GHz Consultation”);
- our statement of December 2013, “*Statement on the future management approach for the 71-76 GHz and 81-86 GHz bands*”²⁰ (the “70/80 GHz Statement”);
- our consultation of September 2013, “*Spectrum Pricing: A framework for setting cost based fees*”²¹ (the “Spectrum Pricing Consultation”);

¹⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/summary/aip2.pdf

¹⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_pricing/statement/statement.pdf

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/summary/condoc.pdf>

¹⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/bespoke-fees-aeronautical/statement/8197_statement.pdf

¹⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/70-80ghz-review/summary/condoc.pdf>

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/70-80ghz-review/statement/statement.pdf>

²¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/cbframework/summary/condoc.pdf>

- our statement of 17 March 2014, “*Spectrum Pricing: A framework for setting cost based fees*”²² (the “Spectrum Pricing Statement”);

A5.8 Further information regarding the awards for the Public Wireless Networks in the Jersey, Guernsey and the Isle of Man can be found in the following documents:

- The Isle of Man consultation of 1 July 2013 “*Consultation on the Licensing of 4G Mobile Services and Notice of Proposed Modification to Existing Licences*”²³ (the “July 2013 Consultation”);
- The Isle of Man statement of 10 September 2013 “*The “Response to Consultation and Decision on the Licensing of 4G Mobile Services*”²⁴ (the “September 2013 Statement”); and
- The Channel Islands Competition and Regulatory Authorities (CICRA)²⁵ consultation of 23 December 2013 “*Pan-Channel Island Second Consultation on award of 800 MHz and 2.6 GHz Spectrum*”²⁶ (the “CICRA Consultation”)

The citizen and/or consumer interest

A5.9 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 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. 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) We believe our decision to adopt an Ofcom Co-ordinated approach for the fixed links bands in 71.125 to 73.125 GHz and 81.125 to 83.125 GHz enables the use of this spectrum, by different types of users, including mobile backhaul. The

²² <http://stakeholders.ofcom.org.uk/binaries/consultations/cbfffframework/statement/CBFstatement.pdf>

²³ <http://www.gov.im/lib/docs/cc/consultations/consultationonthepricingof4g.pdf>

²⁴ <http://www.gov.im/lib/docs/cc/4gconsultationresponse100913final.pdf>

²⁵ The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) are together referred to as CICRA

²⁶ <http://www.cicra.gg/files/13-54%20second%20spectrum%20consultation.pdf>

approach will help support the roll out of 4G backhaul and also encourage further investment and innovation in this sector.

- iv) The intended effect of liberalising Public Wireless Network licences is to improve the efficiency of spectrum management and use²⁷. It provides the means to empower spectrum users to adopt new services and technology and to have stronger commercial incentives to utilise spectrum rights as efficiently as possible. It also removes unnecessary restrictions, so that there will be increased scope to use spectrum in different ways to introduce innovative services and technologies.

Ofcom's policy objective

A5.10 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 telegraphy.

A5.11 Section 12 of the WT Act permits Ofcom to prescribe in regulations the sums payable in respect of wireless telegraphy licences other than those awarded by auction.

Options considered

A5.12 Having made the relevant policy decisions in the documents referred to in A5.7 above, the principal options open to us in connection with the Proposed Regulations are:

- i) to make the Proposed Regulations that introduce new fees for certain licence classes and change others; 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

A5.13 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

A5.14 The Proposed Regulations will 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.

²⁷ Ofcom must have regard to the availability of spectrum to meet current and future demand from all users and to the desirability of promoting efficient management and use, economic and other benefits, innovation and competition. See section 154, Communications Act 2003.

Aeronautical licence classes

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

- A5.15 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.
- A5.16 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.
- A5.17 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.
- A5.18 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 was 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.
- A5.19 In conclusion, we consider that licence fees based on opportunity costs will help 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.
- A5.20 Where frequencies are used on a "commons" basis, often for safety of life purposes, Ofcom has decided to apply zero rated fees (e.g. SafetyCom, international distress and Fire frequencies).
- A5.21 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 may be proportionately 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 will ensure that Ofcom can respond quickly, as and when appropriate, during this period.

- A5.22 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

- A5.23 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 will 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.
- A5.24 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).
- A5.25 We recognise 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.
- A5.26 In the light of this analysis, we concluded 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

- A5.27 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. The impact of imposing AIP based licence fees for VHF on aviation users will fall on a wide variety of users. The impact on the industry as a whole will be an increase of about £3.5m per year at the end of the five years during which increases will be phased in. (The precise amount will depend on how licensees respond to pricing signals).

- A5.28 The largest individual financial impact falls on NATS En-Route plc (NERL) the regulated UK air navigation service provider. The total extra costs amount to 0.24% of NERL's regulated cost base. We understand that, although there may be intervening cash consequences, these costs are likely to be passed through to airlines under the next regulatory price review.
- A5.29 At the large airports where charges are regulated by the CAA, AIP charges are also unlikely to be able to be passed through in the short term so the airports affected will experience a cash impact in the relevant intervening periods before costs are potentially passed onto airlines. However, particularly in the light of our phasing proposals, such cash impacts are likely to amount to only a fraction of a penny per passenger movement. The larger commercial competitive airports will also face AIP charges amounting to a relatively small proportion of their aeronautical revenue which (because the proposed licence fees are industry-wide) are likely to be passed on to users. Charges amount to no more than a few pence per passenger movement at such airports.
- A5.30 The impact on smaller airports becomes proportionately larger, although at typically around 6p per passenger, in the more extreme cases, these impacts are small both in absolute terms and relative to overall costs in the aviation value chain. Furthermore, phasing will mitigate significantly any specific transitional issues.
- A5.31 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 we assumed that the great majority of licensees holding Air/Ground and Aerodrome Flight Information Service assignments which would attract a bespoke fee of £3350 will opt to reduce their DOC and reduce the fee to £650. We confirm that if, in practice, a substantial proportion of these licensees are unable to reduce their fees liability in this way, we will consult on implementing additional transitional arrangements before bespoke fees would otherwise exceed the equivalent generic fee of £2600 set out in the December 2010 statement but superseded by the bespoke fees algorithm set out in the June 2011 statement. We will consult with stakeholders if less than half of these assignments have had their DOC reduced in this way by May 2015.
- A5.32 Small aerodromes will typically see annual cost increases of 20p/movement or less (assuming a fee of £2600 payable for a DOC greater than 10nm radius and 3000ft service height). We note that per movement charges for sampled non-reporting aerodromes are low when compared to the cost of renting a small single engine craft (i.e. £80-£130 per hour before additional fees including fuel, landing fees, and parking). Furthermore, the same charges are very low when compared against the variable per hour operating cost of a business jet (e.g. between £526 and £5,482 total cost per hour). We also note that many small aerodromes may choose to operate with a more localised DOC which will attract an annual fee of £650 instead of £2600.
- A5.33 We are phasing-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 will be in the early years that uncertainty about scope to respond in a manner consistent with safe and efficient operation will 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.

Point to Point Fixed Links in 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands

- A5.34 The supply of spectrum in Self Co-ordinated bands has been reduced by our decision to introduce a mixed management approach in 71 to 76 GHz and 81 to 86 GHz (“70/80 GHz”) bands. This has led to the creation of the 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands for Point to Point Fixed Links under an Ofcom Co-ordinated approach whilst the 73.375 to 75.875 GHz and 83.375 to 85.875 GHz bands would remain available under the Self Co-ordinated licence class.
- A5.35 In our 70/80 GHz Statement we decided that the charges for the (Ofcom coordinated) Point to Point Fixed Links 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands should be based on a pragmatic interim approach. The charges for this spectrum would need to come into effect before the Fixed Link Fee Review has concluded. The annual charge and payment interval for fees for all Self Co-ordinated Links (including the 73.375 to 75.875 GHz and 83.375 to 85.875 GHz bands) would remain unchanged at £50 per link.
- A5.36 We felt that it was not appropriate to extend our existing fees algorithm to determine the fee since direct linkage and extrapolation of the current AIP fees applicable for Point to Point Fixed Links in Ofcom managed spectrum would not result in a sensible fee structure for access to the 70/80 GHz bands.
- A5.37 In setting out our fee proposals we indicated that we viewed them as interim and subject to review as part of a wider review of fixed links fees. Our intention is to review the fees for all spectrum that is managed by Ofcom for fixed links (including the 70/80 GHz bands). However, we noted issues raised by stakeholders regarding the need for stability in our fees.
- A5.38 We decided that the pragmatic approach would be to derive an interim fee (in advance of the Fixed Link Fee Review) based on the current fee rate for the average link value in the 38 GHz band. We considered that the 38 GHz band was a reasonable basis for deriving interim fees as this is the nearest band (in frequency terms) to the 70/80 GHz bands that is currently managed by Ofcom and is extensively used. We derived the proposed fee by:
- identifying the average link fee at 38 GHz;
 - applying the average 38 GHz link fee to a typical channel expected to be used for emerging uses in the 70/80 GHz bands (i.e. 500 MHz);
 - pro-rating the resulting fee rate for a 500 MHz channel in the 70/80 GHz bands for other channel bandwidths; and
 - setting a minimum fee by applying the pro-rated price (to the nearest £100) at 125 MHz to all channel sizes below 250 MHz.
- A5.39 Consequently the interim fees will apply for a period of 5 years from the date of publication of 70/80 GHz Statement irrespective of the wider review concluding that fee rates should be increased. However should the wider review result in a proposal to decrease fees, then we would plan to implement these new fee levels in conjunction with the outcome of the wider review.
- A5.40 Through the consultation process we determined that the existing AIP Fixed Link fee rate was not the appropriate mechanism to charge for links for Point to Point Fixed Links in the 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands at this

time. If we had applied the existing AIP Fixed Link fee rate this could have had an impact on the use of this band and deterred the deployment of new services. This would be inconsistent with our duties regarding the optimal and efficient use of spectrum.

- A5.41 We decided in the 70/80 GHz Statement that making the fee dependent on channel width was an important aspect of the proposal as it would help to promote transmission efficiency; in particular, to encourage licensees to have an appropriate incentive to use smaller channel widths where these can meet their requirements (e.g. using equipment with higher order modulation).
- A5.42 Given our intention to review the interim fee as part of the Fixed Links Fees Review, and for reasons set out in our 70/80 GHz Statement, we believe that our decision to apply the interim fee would not have a significant impact on stakeholders.

National DTT multiplex operators

- A5.43 A full analysis of the options for the proposed fees for DTT multiplex services, and their impact, was set out in section 3 of our Spectrum Pricing Consultation.
- A5.44 There are currently six national DTT multiplexes broadcasting in the UK. Three of these carry public service broadcasting (PSB) services which are available to around 98.5% of the population and are operated by the BBC (2 multiplexes) and Digital 3&4 (which carries ITV, C4 and C5 channels). The remaining three multiplexes provide around 90% UK-population coverage and are commercially operated by SDN and Arqiva (2 multiplexes).
- A5.45 We applied our proposed cost allocation methodology and identified spectrum management costs for all six national DTT multiplex operators totalling £1.13m in 2011/12.
- A5.46 To test the robustness of our 2011/12 analysis, we analysed the costs of our spectrum policy programmatic and project work over a three year period (2010/11 to 2012/13), as this is the category most subject to fluctuation. While some variation in effort was identified, the average cost over the three years was comparable to our 2011/12 figure.
- A5.47 We did not find any justification for an adjustment to fees which fully reflect our spectrum management costs. We took this view for the following reasons:
- Licensees (and other broadcasters hosted on multiplexes, who we expect licence fees will pass through to) have been on notice since 2006 that fees will be introduced in 2014 so have had ample opportunity to plan for their introduction.
 - Spectrum fees were previously imposed on the majority of these operators for analogue transmissions (we note that the scale of those analogue spectrum fees were significantly higher than those proposed here and decreased throughout DSO. Further, the proposed fee is likely to be comparatively low relative to the other costs incurred by a multiplex operator)²⁸. In light of this, and the fact that licensees have been on notice, we do not anticipate any significant risks to the delivery of the benefits of use.

²⁸ There are a range of significant costs associated with running a DTT multiplex (such as network access and transmission fees). See for example, the existing Arqiva reference offer <http://www.arqiva.com/documentation/reference-offers/index.html>

- We have not identified any considerations relevant to our wider duties which justify an adjustment of the level of fees levied on national DTT multiplex operators.
- We are not aware of any particular group of citizens or consumers who would be unfairly and adversely affected by fee levels that reflected our costs, as per our equality impact assessment.

A5.48 On this basis, we did not identify any reason for providing a concession to national DTT multiplex licensees. Furthermore, we did not identify any need to phase in the introduction of fees given licensees have been aware that fees will be introduced in 2014 since 2006.

A5.49 Accordingly, we propose to introduce fees that fully reflect our spectrum management costs from 2014. However, we note that our standard payment terms would allow these licensees to spread the cost of payments over 10 instalments.

A5.50 The unit cost for national DTT multiplexes is based on the number of licences issued. This has been generated by dividing total spectrum management costs for DTT multiplexes by six for each of the national DTT multiplexes.

A5.51 We did not propose to differentiate between national multiplexes with regards to setting fees. This is because our spectrum management costs are broadly similar regardless of whether it is a PSB or commercial multiplex. The spectrum management work we undertake typically relates to the DTT platform as a whole rather than to individual multiplexes. We decided to set the fees for each national multiplex at a level which reflects our spectrum management costs in full, at the full unit cost.

A5.52 We therefore propose to introduce new WT Act fees of £188,000 per annum per national DTT multiplex from 2014

Local TV DTT multiplex operator

A5.53 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.

A5.54 As a result, we classified costs using a bottom-up approach, based on the forecast number of spectrum management fulltime 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 sites²⁹ from which local TV will broadcast (currently 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.

²⁹ 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.

- A5.55 By applying our proposed cost allocation methodology, we identified spectrum management costs for the local TV DTT multiplex of £23,900 in 2011/12.
- A5.56 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. However, we determined that we would be unable to verify this until the service has been operational for at least one full financial year.
- A5.57 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 is now in place with the first services becoming 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.
- A5.58 Therefore while our underlying rationale to introduce cost based spectrum fees remains 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. 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 occur³⁰. To this end, a range of measures have already been put into place by DCMS, Ofcom and the BBC to support local TV³¹.
 - We did not believe that our proposed fee would undermine the Government's objectives for local TV, and therefore we did 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 noted that the proposed fee was likely to be relatively low compared to the other costs incurred by a multiplex operator³².
 - We had 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 were we aware of any particular group of citizens or consumers who would be

³⁰ 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

³¹ This includes funding of up to £40m which the BBC will make 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.

³² 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.archiva.com/documentation/reference-offers/local-dtt-reference-offers/LDTPS%20Transmission%20Reference%20Offer%20\(Versions%203\).pdf](http://www.archiva.com/documentation/reference-offers/local-dtt-reference-offers/LDTPS%20Transmission%20Reference%20Offer%20(Versions%203).pdf)

unfairly and adversely affected by fee levels that reflected our costs, as per our equality impact assessment.

- A5.59 In addition, we recognised that local TV services are new and the licence had only recently been awarded to Comux UK (the licence would not formally commence until November 2013). Introducing fees in this context could risk unduly undermining these wider policy objectives in the short term. In particular, we note that some of Comux UK's services will have only recently launched operational at the point at which fees were introduced.
- A5.60 We considered it appropriate to allow Comux UK a period of adjustment. We propose to phase in the introduction of fees during an initial two year period as local TV services rollout, starting in 2014. We consider this is a sufficient period to manage the risk identified.
- A5.61 We propose to set the fee for the local TV multiplex at a level which (we estimate) reflects our spectrum management costs in full (and at the full unit cost). However, we would phase in the introduction of the fee in recognition of the recent award of the licence and future rollout of services.
- A5.62 The proposed cost based fee will be £23,900 pa, though we intend to set it at a contribution to our costs (50%) for the first two years (in 2014 and 2015 the fee will be £11,950 pa). The full fee of £23,900 pa will apply from 2016.

Northern Ireland DTT multiplex

- A5.63 As is the case with local TV, broadcasting and licensing policy for the Northern Ireland DTT multiplex was also being developed during 2011/12. As such, we lack a baseline for attributable costs relating to the Northern Ireland multiplex.
- A5.64 Consequently, we adopted a similar bottom-up approach to developing fees for this multiplex. This was based on the forecast number of spectrum management FTEs we expected would be required to manage the Northern Ireland multiplex on an on-going basis, and extrapolated other costs from the national DTT multiplex costs for 2011/12 based on this forecast number of FTEs. SE&E costs reflected the one main transmitter used by the multiplex and therefore the much lower number of interference cases handled. As a secondary user of spectrum, we recognised that international spectrum costs were likely to be small and largely incremental for this multiplex so none of the associated costs were included.
- A5.65 By applying our proposed cost allocation methodology, we identified spectrum management costs for the Northern Ireland DTT multiplex of £3,360 in 2011/12.
- A5.66 As noted above with the local TV DTT multiplex, we were mindful of how our spectrum management costs for the Northern Ireland multiplex had 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 would review this fee if we consider there is a significant misalignment with costs in the future. However, we would be unable to verify this until after the sector had been operational for at least one full financial year.
- A5.67 We have considered the policy and sectorial considerations set out in section 3 of our Spectrum Pricing Consultation in relation to the Northern Ireland DTT multiplex. We did not consider that these considerations were of particular relevance to this

licence class such that they should justify an adjustment to fees which fully reflect our spectrum management costs for the following reasons:

- The Northern Ireland DTT multiplex was established as part of the agreements between the UK and Irish Governments to promote cross-border television³³. Although spectrum fees had not previously been levied on the Northern Ireland DTT multiplex, DCMS advised us that any spectrum management fees should fall to DCMS (rather than the multiplex operator) under the terms of the agreements.
- We did not consider that the UK Government's financial support of the Northern Ireland DTT multiplex, or any of our other policy or sectorial considerations, would justify an adjustment to the level of fees levied on the Northern Ireland DTT multiplex. In particular, we did not consider that a fee which fully reflects our spectrum management costs would risk the delivery of wider policy objectives.
- We were not aware of any particular group of citizens or consumers who would be unfairly and adversely affected by fee levels that reflected our spectrum management costs, as per our equality impact assessment.
- We did not identify any basis for providing a concession for this licence fee, nor did we consider it necessary to phase in the introduction of fees.

A5.68 We therefore propose to introduce a new WT Act fee of £3,360 per annum for the Northern Ireland DTT multiplex from 2014.

A5.69 Accordingly, we intend to introduce fees for DTT broadcasting licences that fully reflect our spectrum management costs.

Public Wireless Networks

A5.70 Our proposals to remove the references to 2G and 3G in the Public Wireless Networks licence for the Channel Islands and Isle of Man will mean that all current 2G and 3G spectrum bands would be freed from service and technology restrictions. This will benefit mobile operators by giving them the flexibility to make their own operational choices regarding which services to provide in which bands.

A5.71 The Proposed Regulations will facilitate the way in which spectrum use is liberalised in the Channel Islands and Isle of Man aligning it with spectrum liberalisation policy and practice across the EU and, in particular, within the UK³⁴.

A5.72 The Proposed Regulations will be in line with the Communications Commission's (the "Commission") decision in the Isle of Man. The Commission confirmed in its September 2013 Statement that 4G licences will not be technology-specific. All current 2G and 3G spectrum bands would be liberalised at the same time as the 4G spectrum is awarded. We are aware that CICRA has similarly consulted on the licence liberalisation for Jersey and Guernsey. Irrespective of the outcome of the

³³ http://webarchive.nationalarchives.gov.uk/20101117105445/http://www.digitaltelevision.gov.uk/publications/pub_UK-ROI-MOU.html

³⁴ Ofcom consulted on liberalising some spectrum bands in the UK ; *Variation of 900 MHz, 1800 MHz and 2100 MHz Mobile Licences*: <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800-2100/summary/condoc.pdf> and; *Statement on the Requests for Variation of 900 MHz, 1800 MHz and 2100 MHz Mobile Licences*: <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800-2100/statement/statement.pdf>

CICRA Consultation, the Proposed Regulations aim to facilitate licensing of 4G in the Channel Islands after their award process concludes.

Cost to Ofcom

- A5.73 There are 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.
- A5.74 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

- A5.75 The main alternative amongst the specific options open to us would be to do nothing. 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 be implementing policy changes that Ofcom had previously consulted and decided upon and in relation to which we had published statements.

Aeronautical licence classes

- A5.76 If we do not adopt new fees regulations, the sector would not be subject to an overall increase of around £3.5m in licence charges (based on the full rate of AIP applicable after 5 years). A significant proportion of the proposed increase would fall on NATS En-Route plc (NERL), the regulated UK air navigation service provider. This additional cost would likely to be passed onto airlines under the next regulatory price review.
- A5.77 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 to not be addressed.
- A5.78 The decision Ofcom made to adopt AIP for certain classes of Aeronautical licence is consistent with Ofcom's duties under sections 3 of the 2003 and WT Acts. 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 sections 3 of those Acts.

Point to Point Fixed Links in 71.125 to 73.125 GHz and 81.125 to 83.125 GHz bands

- A5.79 Without the Proposed Regulations the fees for fixed links in the Ofcom co-ordinated bands, 71.125 to 73.125 GHz and 81.125 to 83.125 GHz, would need to continue to be applied under Regulation 6 of the 2011 Regulations³⁵ leading to a lack of consistency in presentation of the fees and confusion about the fees payable for the Ofcom fixed link co-ordinated licence product
- A5.80 The proposed fees will be subject to the forthcoming Fixed Link Fees Review; however, failure to implement it deny licensees the certainty attached to our

³⁵ <http://www.legislation.gov.uk/uksi/2011/1128/made/data.pdf>

decision to cap the fees for a period of 5 years following the publication of the 70/80 GHz Statement.

DTT broadcasting licences

- A5.81 National DTT multiplexes have been broadcasting for well over a decade but no spectrum fees for the WT Act licences held by these licensees are currently charged. As for local TV DTT multiplexes, these are relatively new services, part of which were launched last year, but are yet to be charged. Similarly, spectrum fees have not previously been levied on the Northern Ireland DTT multiplex. Therefore, by doing nothing, no spectrum fees for the WT Act licences held by any of these licensees will be charged.
- A5.82 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. The fees proposed are set at a level which reflects the costs Ofcom incurs in connection with our radio spectrum functions. Not recovering the appropriate level of cost from this sector could lead to higher costs in other areas.

Public Wireless Networks

- A5.83 By doing nothing, 2G and 3G licences for the Isle of Man and Channel Islands will not be liberalised and their existing Public Wireless Networks licences will remain unchanged with technology restrictions. Ofcom will also need to operate new licence products to accommodate the new 4G licences for the Isle of Man and Channel Islands.

The preferred option

- A5.84 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.
- A5.85 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.
- A5.86 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 2014.

Equality Impact Assessment

- A5.87 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.

- A5.88 In addition, we note that there is no available evidence to suggest the decision to apply the further phases of AIP charging 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. 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.
- A5.89 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 2014

STATUTORY INSTRUMENTS

2014 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2014

Made - - - - - 2014

Coming into force - - - 2014

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)⁽³⁶⁾ (the “Act”), makes 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 2014 and shall come into force on [].

Amendment of the Wireless Telegraphy (Licence Charges) Regulations 2011

2. The Wireless Telegraphy (Licence Charges) Regulations 2011⁽³⁷⁾ (“the principal Regulations”) shall be amended in accordance with the following provisions of these Regulations.

Amendment of Schedule 2

3.—

(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)” –

⁽³⁶⁾ 2006 c.36

⁽³⁷⁾ S.I. 2011/1128 as amended by S.I. 2012/1075 and S.I. 2013/917.

- (i) for “exceeds £650, the sum payable is £650” substitute “exceeds £1000, the sum payable is £1000”; and
- (ii) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3000, the sum payable is £3000”.
- (b) in relation to the licence class “Aeronautical Station (Aircraft Communications Addressing and Reporting System)” –
 - (i) for “exceeds £650, the sum payable is £650” substitute “exceeds £1000, the sum payable is £1000”; and
 - (ii) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3000, the sum payable is £3000”.
- (c) in relation to the licence class “Aeronautical Station (Air/Ground, Aerodrome Flight Information Service and Tower)” –
 - (i) for “exceeds £150, the sum payable is £150” substitute “exceeds £400, the sum payable is £400”; and
 - (ii) for “exceeds £500, the sum payable is £500” substitute “exceeds £1200, the sum payable is £1200”.
- (d) in relation to the licence class “Aeronautical Station (Approach)” –
 - (i) for “exceeds £650, the sum payable is £650” substitute “exceeds £1000, the sum payable is £1000”; and
 - (ii) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3000, the sum payable is £3000”.
- (e) in relation to the licence class “Aeronautical Station (Area Control)” –
 - (i) for “exceeds £650, the sum payable is £650” substitute “exceeds £1000, the sum payable is £1000”; and
 - (ii) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3000, the sum payable is £3000”.
- (f) in relation to the licence class “Aeronautical Station (Very High Frequency Data Link)” –
 - (i) for “exceeds £2000, the sum payable is £2000” substitute “exceeds £3000, the sum payable is £3000”; and
 - (ii) for “exceeds £4000, the sum payable is £4000” substitute “exceeds £6000, the sum payable is £6000”.

(3) Under the heading **“Broadcasting”** after the entry for “Broadcasting Services” add the following entries—

National DTT Multiplexes	£188,000		12 months
Local TV DTT Multiplex	£11,950		12 months
Northern Ireland DTT Multiplex	£3360		12 months

(4) Under the heading **“Fixed Links”** —

- (a) for “Point to Point Fixed Links” substitute “Point to Point Fixed Links (exclusive of 71.125 – 73.125GHz and 81.125 – 83.125GHz”); and
- (b) after the entry for “Point to Point Fixed Links” add the following entry—

Point to Point Fixed Links (71.125 – 73.125GHz and 81.125 – 83.125GHz)		(a) £100 for each channel with a bandwidth of less than 250MHz. (b) £225 for each 250MHz of bandwidth	12 months
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		for channels of more than or equal to 250MHz.	
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(5) Under the heading “**Public Wireless Networks**”—

- (a) for “Public Wireless Networks (2G and 3G Cellular Operator – Guernsey)” substitute “Public Wireless Networks (Guernsey)”;
- (b) for “Public Wireless Networks (2G and 3G Cellular Operator – Jersey)” substitute “Public Wireless Networks (Jersey)”;
- (c) for “Public Wireless Networks (2G and 3G Cellular Operator – Isle of Man)” substitute “Public Wireless Networks (Isle of Man)”.