



Decision to make the Wireless Telegraphy (Limitations of Number of Licences) Order 2014

Statement

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Section 1

Executive Summary

- 1.1 This statement presents our decision to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2014 (the “Limitations Order”).¹ This decision follows on from our recent Statutory Notice entitled “Notice of proposals to make the Wireless Telegraphy (Limitation of Number of Licences) Order² (the “Notice”) which we published on 27 November 2013.
- 1.2 The Notice detailed our intention to revoke and replace the Wireless Telegraphy (Limitation of Number of Licences) Order 2003 (SI 2003/1902)³ (the “2003 Limitations Order”) and the Wireless Telegraphy (Limitation of Number of Licences) (Amendment) Order 2006 (S.I. 2006/2786)⁴ (the “Amending Order”).
- 1.3 We are required by section 29(1) of the Wireless Telegraphy Act 2006 (the “WT Act”) to make an order imposing limitations on the use of particular frequencies. Sections 29 (6) and (7) of the WT Act requires us to keep any such order under review and to revoke or amend its provisions if, on reviewing it, we consider it necessary to do so for the purpose of securing the efficient use of electromagnetic spectrum.
- 1.4 The Limitations Order consolidates the limitations that apply to the authorisation of spectrum use⁵ and brings them up to date with current wireless telegraphy licensing practice and policy. This reflects changes to the frequency allocations, uses and Technical Frequency Assignment Criteria (TFAC) which had been made for various classes of licences since the Amending Order was made in 2006; and incorporates a number of new products that have been created since then.
- 1.5 In summary, the Limitations Order makes the following changes:
- Revokes and replaces the 2003 Limitations Order and Amending Order;
 - Inserts new licence products in the light of policy decisions taken by Ofcom since 2006;
 - Updates existing licence products;
 - Updates references to applicable TFAC and the relevant legislation;
 - Removes licence products from the Limitations Order where licences are no longer available and have been replaced by newer products; and
 - Makes editorial changes to correct errors or inaccuracies.
- 1.6 Before deciding to make regulations, in accordance with the requirements of section 122(4) of the WT Act, we published the Notice setting out our proposals to make

¹ S.I. 2014/774.

² http://stakeholders.ofcom.org.uk/binaries/consultations/limitation-order/summary/Limitations_Order_Notice.pdf

³ <http://www.legislation.gov.uk/ukSI/2003/1902/made/data.pdf>

⁴ <http://www.legislation.gov.uk/ukSI/2006/2786/made/data.pdf>

⁵ Spectrum awards issued by auction and grants of Restricted Spectrum Access (RSA) are set out in separate Limitation Orders.

them. The Notice also contained a draft of the Limitations Order (the “Proposed Order”) and invited comments from stakeholders on the drafting of the Proposed Order.

- 1.7 We received 2 non-confidential responses to the Notice. The responses were from NATs and Inmarsat and both agreed with our proposals but did raise additional comments. NATs comments pertained to the drafting of the aeronautical section of the draft regulations whilst Inmarsat queried frequencies they felt had been excluded from both the aeronautical and maritime sections of the draft regulations.
- 1.8 We considered these comments in accordance with section 122(4) (c) of the WT Act. After doing so, and for the reasons set out in this document, we have decided to adopt the Limitations Order with some amendments. As a result of the responses, we determined that it was appropriate to make some further editorial amendments to rectify errors, streamline the Limitations Order and make it more coherent. The details of all the changes made to the draft regulations can be found in section 3. Copies of the Regulations can be obtained through the National Archives⁶

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

Section 2

Background

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”). Under section 29(1) of the WT Act, Ofcom may limit the number of licences it issues for the use of particular frequencies where it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum in the UK. Sections 29(6) and (7) of the WT Act require Ofcom to keep any order under review and to revoke or amend its provisions if necessary for the purpose of ensuring the efficient use of the radio spectrum.
- 2.2 Section 29 of the WT Act implements Article 7(1) (c) of the “Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services 2002/20/EC” (the “Authorisation Directive”)⁷ which places a requirement on all Member States to publish any decision that limits the granting of rights of use stating the reasons for doing so.

Statutory Notice

- 2.3 Under sections 122(4) to (6) of the WT Act, we are required to publish a notice of any proposal to make regulations. The notice must state that Ofcom proposes to make the regulations in question, must set out their general effect, say where a copy may be obtained and give any person or party an opportunity to make representations about them.
- 2.4 We published the Notice, meeting the statutory requirements, on 27 November 2013. The Notice included a copy of the Proposed Order. The Notice gave any person or party who wished to do so until 10 January 2014 to make representations.
- 2.5 The Notice proposed to:
- Revoke and replace the 2003 Limitations Order and Amending Order;
 - Insert some new licence products in light of policy decisions taken by Ofcom since 2006;
 - Update existing licence products;
 - Remove licence products from the Limitations Order where licences are no longer available;
 - Update references to applicable TFAC and the relevant legislation; and
 - Make editorial changes to correct errors or inaccuracies.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0021:0021:EN:PDF> as amended by Directive 2009/140/EC

- 2.6 We received two non-confidential responses to the Notice which agreed with our proposals but did raise additional comments. These have been addressed and resulted in some changes to the Proposed Order. These are detailed in the next section of this document along with our response.

Section 3

Responses to the Notice

Introduction

- 3.1 This section outlines the comments that we received to the Notice and our response to these. We also outline some further amendments that have been made.
- 3.2 We received 2 non-confidential responses. The responses are published in full on our website⁸. Following consideration of the responses as outlined below, we have decided to proceed with our proposal to make the Order subject to some changes.

Stakeholders' responses to the Notice and Ofcom's response

- 3.3 NATS raised a number of issues with the drafting of some sections of Schedule 6 of the Proposed Order, referring to the Aeronautical Sector. Specifically, they raised concern regarding the use of the term "aerodrome" and in relation to the phrase "*forms part of an aerodrome*" in several of the paragraphs in Parts 2. They suggested that this could be incorrectly interpreted to preclude the licensing of communication frequencies to support non-aerodrome operations located other than at an aerodrome.
- 3.4 NATS also expressed concern that the "*aerodrome*" restriction would be inappropriate in relation to some aeronautical licence classes. One of such comments was in relation to the Air Traffic element of the Aeronautical Ground Station (AGS) (Air Traffic/Ground Movement Control) as there are many non-aerodrome uses under this licence class. They made reference to the proposed limitations for the AGS (General Aviation/High Frequency) and Aeronautical Station (Area Control/Approach/Aeronautical Broadcast) classes (paragraphs 7 and 9 of Schedule 6 of the Proposed Order), as well as the Aeronautical Ground Station (Offshore Platform) and Aeronautical Station (Offshore) classes (paragraphs 12 and 14 of Schedule 6).
- 3.5 Similarly, NATS stated in relation to paragraph 18 of Schedule 6 of the Proposed Order, that the ACARS, VDL and Aeronautical Station (Aerodrome Surface and Operational Control) licence classes are not solely related to aerodrome operations. They highlighted that the CAA may issue Operation Control class for flight test purposes. Their comment did not apply to the Aerodrome Surface element of the licence class.
- 3.6 In light of NATS' comments concerning the term "*aerodrome*" we have re-drafted the relevant paragraphs to properly reflect the appropriate limitations. We decided to amend the text and generally refer to "*the station*" and to the requirement that the station "*must be operated in accordance with the Air Navigation Order 2009 or where the station is situated in the Isle of Man or the Channel Islands, the safety requirements that are applicable in the location where the station is situated*".
- 3.7 NATS commented on the positioning of paragraph 17 in Schedule 6 of the Proposed Order which appeared to restrict the licence classes Aeronautical Station -- (ACARS), (VDL) and (Aerodrome Surface and Operational Control) to air traffic

⁸ <http://stakeholders.ofcom.org.uk/consultations/limitation-order/?showResponses=true>

control purposes only. They noted that certain VDL and ACARS stations may be used for air traffic purposes in addition to other operational control functions. They pointed out that some appropriate restriction may still be relevant for the Operation control element of the Aerodrome Surface and Operational Control licence and suggested that paragraph 17 should be moved to appear immediately after paragraph 16 as it does appear to be an appropriate restriction on the AGS (Operations Control).

- 3.8 In response to the comments on the positioning of paragraph 17, and in relation to the restriction on the Operation control element of the Aerodrome Surface and Operational Control licence, the drafting is self-explanatory and is not ambiguous. The limitation will apply to the listed licence products only in so far as they include an element of operational control. As NATS pointed out, we omitted to include the restrictions as stated in the 2006 Limitations Order for AGS (Operations Control) licence; we have rectified this by re-instating the appropriate restrictions for this licence class (see paragraphs 23 and 24 of the Limitations Order).
- 3.9 NATS listed a number of licence classes that had been omitted from Parts 2 and 3 of Schedule 6 of the Proposed Order. It also added that restrictions should be in place for both the Aeronautical Ground Station (Fire) and Aeronautical Station (Fire and Emergency) licence classes.
- 3.10 We agree with NATS on this point and have corrected by adding the relevant licence classes. We have also added restrictions for the Aeronautical Ground Station (Fire) and Aeronautical Station (Fire and Emergency) licence classes.
- 3.11 NATS stated that paragraph 20 Part 3 of Schedule 6, should be amended so as not to preclude transmit only stations. They also noted that the text in paragraph 20 was not consistent with the equivalent text in Schedule 3 Part 2 relating to Fixed Services and stated that the Schedule 3 positioning appeared to be more appropriate.
- 3.12 We have amended the text in paragraph 20 of Part 3 of Schedule 6 so as not to preclude transmit only stations. We have changed “and” in the text “transmission and reception” to “or” thereby taking into account both transmit only and transmitting and receiving stations. In addition, we have rectified any inconsistency in the positioning of paragraph 20 of the Proposed Order by moving by moving it into Part 2 of Schedule 6 (see paragraph 24).
- 3.13 NATS questioned whether the wording of the text that “*an applicant must be in an official position in an air traffic control capacity*” was appropriate. They questioned whether all applicants for licences in certain licence classes would hold such an official position.
- 3.14 In response to the question concerning the reference to “*official position in an air traffic control capacity*”, we have taken NATS comments on board and decided to change the text to “*an applicant must be a person responsible for air traffic control*”. We believe that this is more consistent with imposing the appropriate limitations for the applicable aeronautical licence classes.
- 3.15 In the other response, Inmarsat noted that some satellite bands used for aeronautical and maritime purposes had not been listed. They suggested that we include the following changes to Schedules 5 and 6:
- 3.15.1 Add the 1668 to 1675 MHz band;

- 3.15.2 Replace 1525 to 1559 MHz band with 1518 to 1559 MHz band; and
- 3.15.3 Add 17.3 to 20.2 GHz and 27.5 to 30 GHz bands
- 3.16 In response to the points raised by Inmarsat, we note that these frequencies have not been exclusively allocated for maritime or aeronautical use. They are not currently in either the standard Ship Radio Licence or Aircraft licence. Use of the relevant frequencies are authorised via the use of a Notice of Variation (NoV) of the existing, standard licenses. We clarify in this respect that the Limitations Order only reflects frequencies in our standard licence products. It does not list all frequencies that could be potentially used in the relevant sectors. However, we take on board the comments made by Inmarsat and will consider them further when the relevant licences are next reviewed.

Further Editorial Changes to the Proposed Order

- 3.17 In addition to the changes discussed above, we have made a number of additional minor amendments to the Proposed Order. These are described below.

Schedule 2: Programme Making and Special Events (PMSE)

- 3.18 We have rectified a mistake in the frequencies listed under PMSE- Fixed Site, Link and Low Power licence classes by removing the reference to frequency bands 454.9875 to 455.475 MHz and replacing it with 454.9875 to 455.4625 MHz. We have also updated reference to the PMSE TFAC.

Schedule 3: Fixed Links

- 3.19 In section 3.22 of our Notice⁹ published on 27 November 2013, we explained that Ofcom was consulting on proposals to change the management and authorisation approach within 71 to 76GHz and 81 to 86GHz¹⁰ and that the final Order would reflect the outcome of the consultation.
- 3.20 Following Ofcom's policy decision¹¹, the Self Co-ordinated Links frequency band in the Proposed Order (71 to 76 GHz and 81 to 86 GHz) has been amended to 73.375 to 75.875 GHz and 83.375 to 85.875 GHz; and the (Ofcom Co-ordinated) Point to Point Fixed Links band has been amended to include frequency bands 71.125 to 73.125 GHz and 81.125 to 83.125 GHz. This is reflected in the Limitations Order. We have also updated the reference to the TFAC as this was updated to include these changes.

Schedule 4: Satellite Services

- 3.21 In Part 2 of Schedule 4, we removed the unnecessary reference to Article 2 of the European Commission Decision¹² in paragraph 2. The Decision was implemented by the Regulations which we have also made reference to in this paragraph. Similarly, we have amended the reference to "*Mobile Satellite Service*" in paragraph 2 and replaced this with "*Complementary Ground Components of a Mobile Satellite Service*" to reflect the full name of the licence product.

⁹ <http://stakeholders.ofcom.org.uk/consultations/limitation-order/>

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/70-80ghz-review/summary/condoc.pdf>

¹¹ <http://stakeholders.ofcom.org.uk/consultations/70-80ghz-review/?a=0>

¹² Commission Decision of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS).

Schedule 5: Maritime

- 3.22 In Part 1 of Schedule 5, we have deleted a duplicate reference to the frequency “121.5 MHz” under allocated to maritime use for the Maritime Radio (Suppliers and Demonstration) licence product.
- 3.23 We have inserted the licence products Coastal Station Radio Area Defined and Coastal Station Radio (International) Area Defined (which were omitted from the Proposed Order) and their appropriate limitations in Parts 2 and 3 of Schedule 5. These are maritime licence products that we already issued to licensees.
- 3.24 In Schedule 5, we have streamlined some of the paragraphs in Part 2 by removing redundant texts which we believe has not affected the intention in the Proposed Order. We removed unnecessary text from paragraphs 1 and 4 whilst still retaining the appropriate definitions of the terms in the Radio Regulations. Similarly in paragraph 5 we removed the sentence in the brackets because it was redundant; the Ship Radio Licence and Ship Portable Radio licence products are distinct products.
- 3.25 In Part 3 of Schedule 5 of the Proposed Order we added the footnotes for the Coastal Station Radio TFAC and information booklet respectively. We have also removed the second sentence in paragraph 9 as this pertains more to a procedure that needs to be followed to grant the licence rather than a limitation to the number of licences.

Schedule 6: Aeronautical

- 3.26 In various parts of the Schedule 6 which pertains to Aeronautical sector, we have: inserted the text “*the station is operated* in accordance with the Air Navigation Order 2009” as reference to the undefined term “*aeronautical installation*” could create ambiguity; changed references to the Crown Dependencies to “*the Isle of Man or the Channel Islands*”; and as in section 3.14 above, we changed “*official position*” to “*a person responsible for.*” in various paragraphs in Part 2 for clarity.
- 3.27 In paragraph 2 of Part 2, we removed the sentence in the brackets because it was redundant; the Aircraft Radio Licence and Aircraft (Transportable) Radio Licence products are two distinct products. Similarly, the text in paragraph 19 of Part 3 has been streamlined to facilitate clarity.

Schedule 7: Amateur Radio

- 3.28 In Part 1 of Schedule 7 of the Proposed Order, we updated the names of the Amateur Radio Examinations with the names used by the Radio Society of Great Britain.
- 3.29 In Part 2 we decided to remove the limitations in paragraphs 4, 5 and 6 referring to applicants whose previous licences had been revoked. On reflection, we determined that these paragraphs related more to the procedures to be followed in relation to re-applications for licences. The reason for their inclusion in the Proposed Order was to enable Ofcom take into account previous failure by a person to comply with their licence obligations. We believe that this is already achieved with the existing Regulation 5(c) of the Limitations Order.
- 3.30 In Part 3 of this Schedule, we removed the phrase “*with the exception of the Self Co-ordinated Links licence*” as this does affect the intention of the limitation in this paragraph.

Schedule 8: Science and Technology

- 3.31 Under Part 1 of Schedule 8 of the Limitations Order, we have added a text to remove uncertainty about the frequencies that can be allocated to the Non-Operational Development and Non-Operational Temporary Use licence products; these can be at any range between 1 kHz to 2.50 GHz.

Schedule 9: Business Radio (Police and Fire)

- 3.32 In the Business Radio Police and Fire licence class, we have removed the following frequencies: 138.08750 to 138.11250 MHz, 138.28750 to 138.31250 MHz, 50.200 to 50.400 GHz, 380 to 385 MHz and 390 to 395 MHz and we have added the 3100 to 3402 MHz band. This is in order to cater for spectrum that has been relinquished by the emergency services. It also covers frequencies where new access arrangements have been made with the Ministry of Defence (MoD). We have also taken out the reference to 410 to 412 MHz and 420 to 422 MHz bands as these are crown restricted spectrum access, which are covered under a separate limitations order.

Section 4

Scope of the Regulations

4.1 This section describes the final scope of the Limitations Order. On 19 March 2014 Ofcom made the Limitations Order as proposed, subject to the changes described in section 3 above. The Limitations Order comes into force on 9 April 2014. They are summarised below.

Extent of application

4.2 The Regulations will apply in the United Kingdom, the Channel Islands and the Isle of Man.

Final scope of the Limitations Order

4.3 Regulation 1 sets out the date when the Limitations Order would come into force.

4.4 Regulation 2 revokes the 2003 Limitations Order and the Amending Order.

4.5 Regulation 3 sets out the interpretation of the terms used in the Limitations Order.

4.6 Regulation 4 sets out that Ofcom will grant only limited number of wireless telegraphy licences at the frequencies and uses specified in Part 1 of each of Schedules 1 to 9 of the Limitations Order. The frequencies are listed under the corresponding class of licence in each Schedule;

- Schedule 1 relates to the Broadcasting;
- Schedule 2 relates to Programme Making and Special Events;
- Schedule 3 relates to Fixed Links;
- Schedule 4 relates to Satellite Services;
- Schedule 5 relates to Maritime;
- Schedule 6 relates to Aeronautical;
- Schedule 7 relates to Amateur Radio;
- Schedule 8 relates to Science and Technology; and
- Schedule 9 relates to Business Radio.

4.7 Regulation 5 relates to the criteria that Ofcom shall apply for limiting the number of licences and the persons to whom licences will be granted. In particular it sets out that:

4.7.1 Part 1 of each Schedule in the Limitations Order outlines frequencies and uses to which the limitations apply;

4.7.2 Part 2 of each Schedule specifies the criteria relating to persons to whom wireless telegraphy licences may be granted

- 4.7.3 Part 3 of each Schedule sets out the criteria limiting persons the number of wireless telegraphy licences; and
 - 4.7.4 Ofcom shall also take into account the ability of each applicant for a wireless telegraphy licence to meet the licence terms, provisions and limitations applying to that wireless telegraphy licence.
- 4.8 Regulation 6 sets out criteria for determining the limitations on the number of licences specified in Parts 2 and 3 of each of the Schedules in the Limitations Order.

Annex 1

Respondents

NATS

Inmarsat