
Decision to make the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2020

Statement on changes to the Wireless Telegraphy
(Automotive Short Range Radar) (Exemption)
Regulations arising as a result of the end of the
transition period between the United Kingdom and the
European Union

STATEMENT:

Publication Date: 22 December 2020

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1. Overview

What we have decided – in brief

Automotive Short Range Radars: On 12 November 2020, we consulted on making an amendment to the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013 (the “SRR Regulations”). These regulations exempt the use of certain short range radar (SRR) equipment in the 24 GHz band from the need to hold a Wireless Telegraphy Act licence.

Due to the transition period agreed between the United Kingdom and the European Union coming to an end at 11pm on 31 December 2020, the SRR Regulations needed to be amended to ensure the scope of the licence exemption continues to apply to equipment in vehicles that are registered, placed on the market or put into service in in the United Kingdom (as well as the EU) after the end of the transition period.

We received no comments on the proposed regulations. After reviewing the legislation, we decided to proceed with making the regulations as drafted. On 16 December 2020 Ofcom made the Wireless Telegraphy (Automotive Short Range Radar) (Exemption)(Amendment) Regulations 2020 which will enter force on 31 December 2020.

This overview is a simplified high-level summary only. Our decision to make the regulations is set out in the full document.

- 1.1 This document confirms that following consultation on 16 December 2020 Ofcom made the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2020 (the “Amendment Regulations”). The Amendment Regulations make a minor update to the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2013 (the “SRR Regulations”). Our aim when making the proposed changes to the SRR Regulations was to make the minimum changes necessary to the text of the Regulations to make sure the scope of the Regulations remains the same after the end of the transition period between the United Kingdom (UK) and the European Union (EU) at 11pm on 31 December 2020. A copy of the Amendment Regulations will be published online.¹
- 1.2 Ofcom has power to make regulations by way of a statutory instrument that exempts the need for certain devices to obtain a licence under the Wireless Telegraphy Act 2006 (the “2006 Act”). The SRR Regulations exempt the use of certain short range radars (SRR) established or installed in motor vehicles in the 24 GHz band from the need to hold a licence under the 2006 Act. SRRs are used in a variety of safety applications from autonomous emergency breaking, lane change assistance to parking assistance.

¹ <https://www.legislation.gov.uk/>

- 1.3 Prior to the Amendment Regulations, the SRR Regulations applied to equipment installed in vehicles that are registered, placed on the market or put into service in the Community (i.e. in the European Union). When the transition period ends from 11 pm on 31 December 2020, the United Kingdom (UK) will no longer be treated as a member of the European Union (EU). Therefore, after this date the exemption would have ceased to apply to equipment in UK vehicles. It would therefore have become unlawful for such equipment to use the spectrum without a licence granted by Ofcom.
- 1.4 To resolve this issue, on 12 November 2020 we proposed a minor change to the SRR Regulations to ensure the provision covered vehicles registered, placed on the market or put into service in the Community and the UK. Under the terms of the European Union (Withdrawal Agreement) Act 2020 the end of the transition and implementation period is known as the “IP completion day” and this is the term we use in the amended SRR Regulations to refer to this date.²
- 1.5 As required by section 122(4) and (5) of the 2006 Act we consulted on a draft of the Amendment Regulations in our Notice published on 12 November 2020.³ Under this provision we are required to give statutory notice of our proposals to make the Amendment Regulations and give one month for any representations to be made. Comments on the Regulations were asked for by 14 December 2020. We received no comments on the proposed regulations.
- 1.6 After reviewing the draft legislation, we decided to proceed with the making the regulations as set out in the Notice. On 16 December 2020 we made the Amendment Regulations which will enter force on “IP completion day” (i.e. 11pm on 31 December 2020).

² See section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020. Schedule 5, Part 2, paragraph 12(b) inserts an equivalent definition of “IP completion day” into Schedule 1 of the Interpretation Act 1978.

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/207258/srr-consultation.pdf

2. Decision

General legislative background

- 2.1 Under section 8 (1) of the 2006 Act, it is unlawful to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus except under and in accordance with a wireless telegraphy licence granted under the 2006 Act.
- 2.2 Under section 8 (3) of that Act, Ofcom may make regulations exempting from the licensing requirements under section 8 (1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or description as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be specified.
- 2.3 Under section 8(4) of the 2006 Act, we must make regulations to exempt equipment if its installation or use is not likely to:
- involve undue interference with wireless telegraphy;
 - have an adverse effect on technical quality of service;
 - lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - endanger safety of life;
 - prejudice the promotion of social, regional or territorial cohesion; or
 - prejudice the promotion of cultural and linguistic diversity and media pluralism.
- 2.4 In accordance with the requirements of section 8(3B) of the 2006 Act, the terms, provisions and limitations specified in the regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.
- 2.5 We make exemption regulations by means of a statutory instrument. Before making any such regulations, we are required by section 122(4) of the 2006 Act to give notice of our proposal to do so. Under section 122(5), the notice must state that we propose to make the regulations in question, set out their general effects, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time period of at least one month during which any representations with respect to the proposal must be made to us.

The changes

- 2.6 The SRR Regulations implemented the European Commission decision on the harmonisation for the use of automotive SRR equipment in the 24 GHz spectrum band (21.65 to 26.65 GHz) in the Community (2005/50/EC)⁴. This decision was later amended in 2011 by European Commission Decision 2011/458/EU⁵.
- 2.7 In accordance with the European Commission Decisions, prior to their amendment, the SRR Regulations permitted automotive SRR equipment that is installed, or that is replacing equipment so installed, in a vehicle that was registered, placed on the market or put into service in the Community (i.e. in the EU) after 30 June 2013 to operate in the 24.25 to 26.65 GHz part of the 24 GHz band on a licence-exempt basis (subject to compliance with various terms, provisions and limitations).⁶ Specifically:
- a) Regulation 5(1) provided that the establishment or installation of automotive SRR equipment in a vehicle and the use of equipment so established or installed is exempt from the provisions of section 8(1) of the 2006 Act where the terms, provisions and limitations in regulation 5 are met.
 - b) Regulation 5(2) provided that the establishment or installation of the equipment must be in a vehicle which was registered, placed on the market or put into service in the Community after 30 June 2013, or must be in a vehicle in which equipment was so established or installed in order to replace that equipment.
- 2.8 If the SRR Regulations were not amended, this licence exemption would have ceased to apply to equipment in vehicles that are registered, placed on the market or put into service in the UK after IP completion day, since the UK would cease to be a member of the EU. It would therefore have become unlawful for such equipment to use the spectrum without a licence granted by Ofcom.
- 2.9 We therefore proposed to amend the SRR Regulations so that they would continue to permit the operation of automotive SRR equipment in the 24.25 to 26.65 GHz part of the 24 GHz band on a licence exempt basis, where such equipment is installed in a vehicle which is registered, placed on the market or put into service in the UK or in the EU after IP completion day.

Consultation on the Amendment Regulations

- 2.10 To give effect to the changes, we proposed to make the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (Amendment) Regulations 2020 (the “Amendment

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:021:0015:0020:EN:PDF>

⁵ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0485:EN:PDF>

⁶ The SRR Regulations also permit automotive SRR equipment that was installed, or that is replacing equipment so installed, in a vehicle that was registered, placed on the market or put into service in the Community between 1 July 2005 and 30 June 2013 are permitted to continue to use the 21.65 and 24.25 GHz part of the 24 GHz band on a licence-exempt basis (subject to complying with various terms, provisions and limitations), but this was closed to new deployments from 30 June 2013. This exemption is not affected by the proposals set out in this document.

Regulations”). In accordance with the requirements of section 122(4) and (5) of 2006 Act, we were required to give statutory notice of our proposals to make the Amendment Regulations, giving at least one month for any representations to be made. On 12 November 2020 we published our consultation⁷ (the “Notice”) on the proposed changes and asked for any representations on the Notice to be made by 14 December 2020.

- 2.11 The Notice set out our proposals to amend regulation 5(2) of the SRR Regulations to replace the existing wording, which specified that, in order for the licence exemption to apply, the establishment or installation of equipment must be in a vehicle which is registered, placed on the market or put into service in the Community.
- 2.12 In its place, we proposed that the Amendment Regulations would substitute new wording for regulation 5(2) which would require that the equipment must be established or installed in a vehicle which was registered, placed on the market or put into service: (a) in the EU during the period starting on 1 July 2013 and ending immediately before IP completion day; or (b) in the UK or in the EU after IP completion day. The proposed new wording would also continue to exempt equipment in a vehicle in which equipment was so established or installed in order to replace that equipment.
- 2.13 We considered whether to amend this exemption so that it would apply only in relation to equipment installed in vehicles which are registered, placed on the market or put into service in the UK. However, this would have amounted to a narrowing in scope of application of the exemption. We were not proposing to change the scope of any regulatory conditions or implement any changes of regulatory policy through our consultation.
- 2.14 The consultation closed on 14 December 2020 and we received no comments on the draft regulations.

Decision

- 2.15 After reviewing the draft legislation we decided to proceed and make the Amendment Regulations as proposed to ensure that the SRR Regulations continue to have the same scope and effect after IP completion day as before, by making the minimum changes necessary to the text of the SRR Regulations. On 16 December 2020 we made the Amendment Regulations which will enter force on IP completion day (i.e. 11pm on 31 December 2020).
- 2.16 Given that the changes are intended merely to ensure the current effect and scope of the SRR Regulations is maintained after the UK leaves the EU, we do not anticipate the changes will have any impact on stakeholders. Therefore, we did not carry out an additional formal regulatory impact assessment as we had already carried one out when making the SRR Regulations.

⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-3/wireless-telegraphy-asrr-exemption-regulations>