



Notice of proposals to make Wireless Telegraphy licence exemption regulations

Consultation

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10 May 2013

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Section 1

Executive summary

- 1.1 This document consults on two draft regulations, the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013 (the 'Proposed SRD Regulations') and the Wireless Telegraphy (Exemption) (Amendment) Regulations 2013 (the 'Proposed Handset and MSS Regulations'). These regulations set out the technical parameters that certain equipment must meet in order to be exempt from the need to hold a wireless telegraphy licence.
- 1.2 Under section 8(1) of the Wireless Telegraphy Act 2006 (the 'WT Act'), it is an offence to establish, install or use equipment for wireless telegraphy without holding a licence granted by us, unless the use of such equipment is exempted. Ofcom is able to make regulations exempting the use of equipment by using powers conferred by section 8(3) of the WT Act.
- 1.3 In 2012 we published two consultations: "Licence Exemption of Wireless Telegraphy Devices: Proposed Changes"¹ published on 26 July 2012 (the 'First Consultation') and "Licence Exemption of Wireless Telegraphy Devices: Statement and Further Consultation"² published on 13 December 2012 (the 'Second Consultation'). These outlined a number of proposals relating to the exemption of wireless telegraphy devices, including :
 - setting a date to close the 10.675 to 10.699 GHz band after which no new Short Range Devices (SRDs) will be able to be deployed in that band. Equipment in use prior to the closure date will continue to be licence exempt. We proposed to give industry eighteen months' notice of this decision;
 - extending the licence exemption for Mobile Satellite System (MSS) user terminals to include the 1518 to 1525 MHz, 1525 MHz to 1559 MHz, 1626.5 MHz to 1660.5 MHz and 1670 to 1675 MHz bands; and
 - extending the licence exemption for Radio Determination applications from 10.577 to 10.597 GHz to 10.575 to 10.6 GHz (extending the current allocation by 5 MHz).
- 1.4 On 26 February 2013, having taken into consideration the responses that we received, we decided to proceed with our proposals³. In order to implement the changes we need to make these regulations.
- 1.5 In addition to the proposals set out in our First and Second Consultations the Proposed Handset and MSS Regulations will also introduce legislation to enable the use of fourth generation (4G) mobile handsets (both Long term Evolution (LTE) and Worldwide Interoperability for Microwave Access (WiMAX), in the 800 MHz, 2100

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-devices-2/summary/wireless-telegraphy-device-2.pdf>

² <http://stakeholders.ofcom.org.uk/binaries/consultations/licence-exemption-wireless/summary/condoc.pdf>

³ Statement available at <http://stakeholders.ofcom.org.uk/consultations/licence-exemption-wireless/statement/>

MHz and 2.6 GHz frequency bands. These amendments are made in connection with the implementation of the following European Union (EU) Decisions:

- 1.5.1 Commission Decision 2008/477/EC of 13 June 2008 on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community⁴;
 - 1.5.2 Commission Decision 2010/267/EU of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union⁵;
 - 1.5.3 Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme⁶; and
 - 1.5.4 Commission Implementing Decision 2012/688/EU of 5 November 2012 on the harmonisation of the frequency bands 1920-1980 MHz and 2110-2170 MHz for terrestrial systems capable of providing electronic communications services in the Union⁷.
- 1.6 In accordance with the requirements of section 122(4) and (5) of the WT Act this document gives notice of our intention to make the Proposed SRD Regulations and Proposed Handset and MSS Regulations. Comments on these regulations are invited by **5pm** on **10 May 2013**.
- 1.7 Subject to consideration of responses we intend to bring the new regulations into force in June 2013. Copies of both sets of regulations are included in the Annexes to this document. Further copies may be obtained from www.ofcom.org.uk or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:163:0037:0041:EN:PDF>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:117:0095:0101:EN:PDF>

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0007:0017:EN:PDF>

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:307:0084:0088:EN:PDF>

Section 2

Background

Authorising spectrum use

- 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 8(1) of the WT Act, it is an offence to establish, install or use equipment to transmit without holding a licence granted by us, unless the use of such equipment is exempted.
- 2.2 Under section 8(4) of the WT Act, we have to make regulations to exempt equipment if the following conditions are met, namely its 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.
- 2.3 In accordance with the requirements of section 8(3B) of the WT Act, the terms, provisions and limitations specified in the regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.

First Consultation

- 2.4 In the "Licence Exemption of Wireless Telegraphy Devices"⁸ published on 26 July 2012 (the 'First Consultation'), we proposed to amend arrangements for equipment which is already subject to licence exemption, including:
- giving eighteen months' notice of the closure of the 10.675 to 10.699 GHz band after which no new Short Range Devices (SRDs) will be able to be deployed in

⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-devices-2/summary/wireless-telegraphy-device-2.pdf>

that band. Equipment in use prior to the closure date will continue to be licence exempt; and

- extending the licence exemption for Mobile Satellite System (MSS) user terminals to include the 1518 to 1525 MHz, 1525 MHz to 1559 MHz, 1626.5 MHz to 1660.5 MHz and 1670 to 1675 MHz bands.

2.5 Based on the responses received we decided to proceed with these proposals⁹. The changes to the licence exemption of SRD devices will be implemented through the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013 (which for the purposes of this document we refer to as the 'Proposed SRD Regulations') at Annex 6. We intend to update the technical requirements in the Interface Requirement "IR 2030 - UK Interface Requirements 2030 Licence Exempt Short Range Devices" (IR 2030)¹⁰ accordingly. The changes will be finalised when the Proposed SRD Regulations come into force. The eighteen month notice of the closure of the 10.68 GHz band will start on the date that the Proposed SRD Regulations enter force as referenced in the updated IR 2030.

2.6 The changes to the MSS licence exemption will be implemented through the Wireless Telegraphy (Exemption) (Amendment) Regulations 2013 (which for the purposes of this document we refer to as the 'Proposed Handset and MSS Regulations'). We intend to update the technical requirements in the Interface Requirement "IR 2016 – UK Radio Interface Requirement for Land Mobile Satellite Systems" (IR 2016)¹¹ accordingly. The changes will be finalised when the Proposed Handset and MSS Regulations come into force.

Second Consultation

2.7 In light of some of the responses to the First Consultation, on 13 December 2012 we published "Licence Exemption of Wireless Telegraphy Devices: Statement and Further Consultation"¹² (the 'Second Consultation'). The Second Consultation proposed to amend the current licence exemption for Radio Determination applications operating at 10.577 to 10.597 GHz. We proposed to extend this allocation by 5 MHz to 10.575 to 10.6 GHz.

2.8 Based on the responses received we decided to proceed with this proposal¹³. This will be implemented through the Proposed SRD Regulations at Annex 6. We intend to update the technical requirements in IR 2030 accordingly. The changes will be finalised when the Proposed SRD Regulations come into force.

⁹ Responses and statement available at

<http://stakeholders.ofcom.org.uk/binaries/consultations/licence-exemption-wireless/summary/condoc.pdf>

¹⁰ http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-management/research-guidelines-tech-info/interface-requirements/2013-03-23_Draft_IR2030.pdf

¹¹ http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-management/research-guidelines-tech-info/interface-requirements/Draft_IR_2016_may13.pdf

¹² <http://stakeholders.ofcom.org.uk/binaries/consultations/licence-exemption-wireless/summary/condoc.pdf>

¹³ Responses and statement available at <http://stakeholders.ofcom.org.uk/consultations/licence-exemption-wireless/statement/>

Other amendments to the Regulations

- 2.9 In addition to the decisions set out in relation to the First and Second Consultations, the Proposed Handset and MSS Regulations will also include changes that we need to introduce as a result of the following European Union (EU) Decisions which are legally binding on the UK:
- 2.9.1 Commission Decision 2008/477/EC of 13 June 2008 on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community (the ‘2.6 GHz Decision’)¹⁴;
 - 2.9.2 Commission Decision 2010/267/EU of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union (the ‘800 MHz Decision’)¹⁵;
 - 2.9.3 Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (the ‘RSPP Decision’)¹⁶; and
 - 2.9.4 Commission Implementing Decision 2012/688/EU of 5 November 2012 on the harmonisation of the frequency bands 1920-1980 MHz and 2110-2170 MHz for terrestrial systems capable of providing electronic communications services in the Union (the ‘2100 MHz Decision’)¹⁷.
- 2.10 Most EU harmonisation measures are prepared in collaboration with the European Conference of Postal and Telecommunications Administrations (CEPT) and adopted by the EU with the assistance of the Radio Spectrum Committee (RSC). As implementation of the measures outlined in these Decisions is a mandatory requirement for all Member States we did not seek responses in either the First or Second Consultation on these changes. The information below outlines how we intend to implement the requirements to exempt equipment from the need to hold a WT Act licence as a result of these Decisions.

The implementation of the 2.6 GHz, 800 MHz and RSPP Decisions

- 2.11 On 13 June 2008 the European Commission adopted the 2.6 GHz Decision relating to the 2.6 GHz band. The 2.6 GHz Decision, which is binding on Member States, required them to designate the 2.6 GHz band within 6 months of the decision’s entry into force and subsequently make it available on a non-exclusive basis for terrestrial systems capable of providing electronic communications services (which includes 4G), subject to a number of specified technical parameters relating to harmful interference.
- 2.12 On 6 May 2010 the European Commission adopted the 800 MHz Decision relating to the 800 MHz band. The 800 MHz Decision, which is also binding on Member States, is intended to harmonise the technical conditions for the availability and efficient use of the 800 MHz band. Whilst the 800 MHz Decision did not require Member States to designate or make available the 800 MHz band, it does provide that if they decide to

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:163:0037:0041:EN:PDF>

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:117:0095:0101:EN:PDF>

¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0007:0017:EN:PDF>

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:307:0084:0088:EN:PDF>

do so (other than for high-power broadcasting networks) they must do so on a non-exclusive basis for terrestrial systems capable of providing electronic communications services (which includes 4G), again subject to a number of specified technical parameters relating to harmful interference.

- 2.13 On 14 March 2012 the European Parliament and the Council adopted the RSPP Decision which establishes a Radio Spectrum Policy Programme with the intention of setting policy orientations and objectives for the strategic planning and harmonisation of the use of spectrum. The RSPP Decision, which is binding on Member States, requires that Member States make the 2.6 GHz band available in accordance with the terms and conditions of the 2.6 GHz Decision and, subject to market demand, carry out the authorisation process by 31 December 2012 (without prejudice to the existing deployment of services, and under conditions that allow consumers easy access to wireless broadband services). It also requires that Member States carry out the authorisation process for the 800 MHz band by 1 January 2013 in order to allow the use of that band for electronic communications services.
- 2.14 We have recently awarded the 800 MHz and 2.6 GHz bands¹⁸. As part of this process we set out and consulted on technical parameters in accordance with which equipment must operate¹⁹. These were in line with the 800 MHz and 2.6 GHz Decisions that relate to these bands. As part of our consultations²⁰ on the proposed awards we advised that the use of certain user terminals (i.e. handsets/dongles) would be licence-exempt (we will not be exempting terminals with a Total Radiated Power above 23 dBm in the 2.6 GHz band). In order to introduce the relevant licence exemptions, we propose to amend the Wireless Telegraphy (Exemption) Regulations 2003 to exempt LTE and WiMAX user terminals operating in the 800 MHz and 2.6 GHz bands from the requirement to hold a licence under the WT Act.
- 2.15 Interface Requirements “IR 2072 - UK Interface Requirement 2072 Terrestrial systems capable of providing electronic communications services in the band 2500 to 2690 MHz” (IR 2072)²¹ and “IR 2090 – UK Interface Requirement 2090 Terrestrial systems capable of providing electronic communications services in the 800MHz band” (IR 2090)²² detail the technical conditions for the use of LTE and WiMAX user terminals in the UK in the 800 MHz and 2.6 GHz bands and are available on Ofcom’s website²³. These Interface Requirement documents will be finalised when the Proposed Handset and MSS Regulations come into force.
- 2.16 As a Member State of the European Union, the UK is bound by the terms of the Decisions and is required to implement them. Consequently, we have an obligation to transpose these requirements into UK law by the deadlines set out in the Decisions. The Proposed Handset and MSS Regulations will permit the use of 4G user terminals (handsets/dongles) in the 790 to 862 MHz (‘800 MHz band’) and 2500 to 2690 MHz (‘2.6 GHz band’) as required by the 800 MHz, 2.6 GHz and RSPP Decisions. Equipment under the control of a licensed network that complies with the

¹⁸ <http://stakeholders.ofcom.org.uk/spectrum/spectrum-awards/>

¹⁹ “Consultation and information on technical licence conditions for 800 MHz and 2.6 GHz spectrum and related matters” published 2 June 2011. Available at

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

²⁰ <http://stakeholders.ofcom.org.uk/spectrum/spectrum-awards/awards-archive/completed-awards/800mhz-2.6ghz/>

²¹ http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-management/research-guidelines-tech-info/interface-requirements/Draft_Revision_of_IR_2072.pdf

²² http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-management/research-guidelines-tech-info/interface-requirements/IR_2090_800_MHz.pdf

²³ <http://stakeholders.ofcom.org.uk/spectrum/technical/interface-requirements/?a=0>

regulations and meets the requirements of IR 2072 and IR 2090 will be exempt from the need to hold WT Act licence.

The 2100 MHz Decision

- 2.17 On 5 November 2012 the European Commission adopted Commission Implementing Decision 2012/688/EU which requires Member States to designate and make available the 2100 MHz band under conditions that enable the use of 4G technology by no later than 30 June 2014, or earlier if issuing/amending rights in this band.
- 2.18 As a Member State of the European Union, the UK is bound by the terms of the Decision and is required to implement them. Consequently, we have an obligation to transpose this requirement into UK law by the deadlines set out in the Decision. The implementation of this Decision was subject to an Ofcom consultation "Variation of 900 MHz, 1800 MHz and 2100 MHz Mobile Licences"²⁴ published on 1 February 2013. This consultation proposes to liberalise the current 2100 MHz band licences awarded in 2000 and remove some of the restrictions currently in place on the technologies that can be employed. We are proposing a common standard of technology neutrality as opposed to the current restriction of only permitting Universal Mobile Telecommunications System (UMTS) (also known as 3G). This would facilitate any future re-farming by operators as their networks in other bands mature. The consultation closed on 29 March 2013.
- 2.19 In order to implement this Decision, we also propose to amend the Wireless Telegraphy (Exemption) Regulations 2003 to exempt LTE and WiMAX user terminals operating in the 2100 MHz band from the requirement to hold a licence under the WT Act.
- 2.20 Interface Requirements "IR 2092- UK Interface Requirement 2092 Terrestrial systems capable of providing electronic communications services in the frequency bands 1920-1980 MHz and 2110-2170 MHz" (IR 2092)²⁵ details the technical conditions for the use of LTE and WiMAX user terminals in the UK and is available on Ofcom's website²⁶. This Interface Requirement will be finalised when the Proposed Handset and MSS Regulations come into force.
- 2.21 The Proposed Handset and MSS Regulations will permit the use of fourth generation (4G) (LTE and WiMAX) user terminals (handsets/dongles) in the 1920 to 1980 MHz and 2110 to 2170 MHz (the '2100 MHz band') as required by the 2100 MHz Decision. Equipment under the control of a licensed network that complies with the regulations and meets the requirements of IR 2092 will be exempt from the need to hold WT Act licence.

²⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800-2100/summary/condoc.pdf>

²⁵ http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-management/research-guidelines-tech-info/interface-requirements/Draft_IR_2092.pdf

²⁶ <http://stakeholders.ofcom.org.uk/spectrum/technical/interface-requirements/?a=0>

Section 4

General effect of the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013

The legislative framework

- 3.1 We can exempt the establishment, installation and use of wireless telegraphy equipment by making Regulations under section 8(3) of the WT Act. We propose to implement the changes in this document by making the Proposed SRD Regulations.
- 3.2 The Proposed SRD Regulations will amend the Wireless Telegraphy (Exemption and Amendment) Regulations 2010 (the '2010 Regulations').

Extent of application

- 3.3 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.

The Proposed SRD Regulations

- 3.4 A draft of the Proposed SRD Regulations is set out in Annex 6.
- 3.5 Regulation 2 amends the exemption for Short Range Devices (SRDs) in the 2010 Regulations to include reference to the revised version of IR 2030 which updates the technical requirements that the relevant equipment must meet to be licence exempt. This includes the changes providing for the closure of the 10.675 to 10.699 GHz band to new deployment of SRDs following an eighteen month notice period and for the new 10.575 to 10.6 GHz extended band for Radio Determination applications.

Section 5

General effect of the Wireless Telegraphy (Exemption) (Amendment) Regulations 2013

The legislative framework

- 4.1 We can exempt the establishment, installation and use of wireless telegraphy equipment by making Regulations under section 8(3) of the WT Act. We propose to implement the changes in this document by making the Proposed Handset and MSS Regulations.
- 4.2 The Proposed Handset and MSS Regulations will amend the Wireless Telegraphy (Exemption) Regulations 2003 (the '2003 Regulations').

Extent of application

- 4.3 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.

The Proposed Handset and MSS Regulations

- 4.4 A draft of the Proposed Handset and MSS Regulations is set out in Annex 7.
- 4.5 Regulation 2 inserts provisions into the 2003 Regulations in order to licence exempt the use of for LTE and WiMAX user terminals in the 800, 2100 and 2600 MHz frequency bands .
- 4.6 Regulations 3 inserts into the 2003 Regulations reference to the corresponding technical requirements set out in IR 2072, IR 2090 and IR 2092 that the above equipment must meet in order to be licence exempt.
- 4.7 Regulation 4 amends the licence exemption for MSS handsets to include reference to the revised version of IR 2016 which updates the technical requirements that the relevant equipment must meet to be licence exempt. This includes the changes providing for the extension of this licence exemption to cover the 1518 to 1525 MHz, 1525 MHz to 1559 MHz, 1626.5 MHz to 1660.5 MHz and 1670 to 1675 MHz bands.

Do you have any comments on the drafting of the Proposed SRD Regulations or Proposed Handset and MSS Regulations?

Annex 1

Responding to this notice

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 May 2013**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/notice-proposals-wireless/>, 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 paul.chapman@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.
- Paul Chapman
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 question asked in this document, which are listed together 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 Paul Chapman on 020 7981 3069.

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 in June 2013.
- 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 questions

Question 1. Do you have any comments on the drafting of the Proposed SRD Regulations or Proposed Handset and MSS Regulations?

Question 2. Do you have any comments on the Regulatory Impact Assessment?

Annex 5

Impact Assessment

Introduction

- A5.1 In accordance with Government practice, where a statutory regulation is proposed, a Regulatory Impact Assessment (RIA) must be undertaken. The analysis presented here, when read in conjunction with the rest of this document, represents an RIA as defined by section 7 of the Communications Act 2003 ('the Communications Act').
- A5.2 You should send us any comments on this RIA by the closing date for this Notice. We will consider all comments before deciding whether to implement our proposals.
- A5.3 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Communications Act, which means that we will generally carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. In accordance with section 7 of the Communications Act, in producing this RIA, we have had regard to such general guidance as we consider appropriate including related Cabinet Office guidance. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

Background

- A5.4 In the UK, 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 8(1) of the WT Act, it is an offence to install or use equipment to transmit without holding a licence granted by us, unless the use of such equipment is exempted. However, under section 8(4) of the WT Act, we have to make regulations to exempt equipment if its 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.

- A5.5 In accordance with the requirements of section 8(3B) of the WT Act, the terms, provisions and limitations specified in the regulations must be:
- objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what they are intended to achieve; and
 - transparent in relation to what they are intended to achieve.

Proposal

- A5.6 This RIA relates to the proposal to make exemption regulations exempting a number of low powered devices which meet certain criteria from the need for a WT licence. This will be achieved through making two new sets of regulations:
- the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013 (the 'Proposed SRD Regulations'); and
 - the Wireless Telegraphy (Exemption) Regulations 2013 (the 'Proposed Handset and MSS Regulations').
- A5.7 The changes proposed fall into the following categories:
- measures to extend the use of existing licence-exempt Radio Determination applications in the 10.575 to 10.6 GHz frequency band;
 - measures to close the 10.68 to 10.7 GHz frequency band for Short Range Devices (SRDs); and
 - measures to implement European Union (EU) legislation for mobile devices operating in the 800 MHz, 2100 MHz and 2.6 GHz frequency bands.

The citizen and/or consumer interest

- A5.8 Our principal duty under section 3 of the Communications 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 to the existing regulations 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 measures proposed all concern the use of radio equipment on a licence-exempt basis, which reduces the regulatory and administrative burden on our stakeholders and helps to secure the optimal use of spectrum;

- ii) licence exemption is proposed only in areas where use of equipment is unlikely to have an impact on technical quality of service and cause undue interference to other spectrum users;
 - iii) the exemptions support the introduction of new and innovative technologies that will be of benefit to consumers in general; and
 - iv) the proposals seek to protect receive-only services that play an important role in weather forecasting and monitoring climate change.
- A5.9 We are required by statute to assess the impact of all our functions, policies, projects and practices on race, disability and gender equality – an Equality Impact Assessment (EIA) is our way of fulfilling these obligations.
- A5.10 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 SRD Regulations and Proposed Handset and MSS 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.
- A5.11 In addition, we note that there is no available evidence to suggest the decision to make changes to the licence exemption regulations 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.
- A5.12 We have not carried out a full Equality Impact Assessment in relation to race equality or under the Northern Ireland Equality Scheme 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.

Ofcom's policy objective

- A5.13 We seek wherever possible, to reduce the regulatory burden upon our stakeholders, in this instance users of the radio spectrum. One way in which we can do this is to remove the need for spectrum users to apply for individual licences to authorise the use of radio equipment. Exemption is realised by describing the details of equipment and the parameters under which it may be used in a Statutory Instrument (secondary legislation called Regulations) that exempts users of such equipment from the need to hold a licence provided they comply with the terms of the regulations.
- A5.14 In accordance with the WT Act, we must exempt from licensing the use of specified equipment that meet the requirements of sections 8(4) and 8(5) of the WT Act. We are also required by law to implement EU legislation relating to radio spectrum and from time to time this requires licence exemption arrangements to be changed.

Options considered

- A5.15 Having made the relevant policy decisions in other documents referred to the principal options open to us in connection with the proposed regulations are:
- i) to make regulations (the Proposed SRD Regulations and the Proposed Handset and MSS Regulations) that introduce the ability for some devices to operate on a licence exempt-basis; or
 - ii) to do nothing, which means that these devices would need to be authorised via a WT Act licence.

Analysis of the different options

- A5.16 The following assesses the impact of options open to Ofcom by reference to the principal changes that would be made by the proposed regulations.
- A5.17 The Proposed SRD Regulations and Proposed Handset and MSS Regulations implement some changes that we previously consulted on. These consultations provide an analysis of the policy options and the potential impacts of these proposals. This annex should be read in conjunction with the following documents:
- “Licence Exemption of Wireless Telegraphy Devices”²⁷ published 26 July 2012 (the ‘First Consultation’);
 - “Licence Exemption of Wireless Telegraphy Devices; Statement and Further Consultation”²⁸ published 13 December 2012 (the ‘Second Consultation’);
 - “Assessment of future mobile competition and award of 800 MHz and 2.6 GHz. A statement”²⁹ published 24 July 2012; and
 - “Variation of 900 MHz, 1800 MHz and 2100 MHz Mobile Licences”³⁰ published on 1 February 2013.

To make the regulations

Impact of proposed regulations

- A5.18 When considering the authorisation of devices Ofcom can either license them or make regulations to exempt them from licensing. Section 8(4) of the WT Act requires that if Ofcom is satisfied that the criteria set out in section 8(5) of the WT Act are met, Ofcom must make regulations to licence-exempt the equipment. If the equipment does not meet all of the requirements of section 8(5) this does not prevent Ofcom still going ahead with exemption but any decision would need to consider the impacts compared to the benefits of any such decision.

²⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-devices-2/summary/wireless-telegraphy-device-2.pdf>

²⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/licence-exemption-wireless/summary/condoc.pdf>

²⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/statement.pdf>

³⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800-2100/summary/condoc.pdf>

- A5.19 Generally, licence-exemption presents the lowest barrier to entry compared with other forms of authorisation, such as individual licences. Our analysis takes this proposition as a starting point and then assesses concerns over harmful interference or congestion to existing users (if any) or potential new users of the band. Harmful interference or congestion could negate the benefits of any reductions in the regulatory burden gained from exemption.
- A5.20 Some of the measures that the Proposed Handset and MSS Regulations would implement involve the implementation of EU Decisions that require allocation of specified spectrum bands for a particular purpose. EU Decisions are binding on the EU Member States and we are therefore legally required to implement them.
- A5.21 The Proposed SRD Regulations would bring UK legislation in line with international agreements by closing access to a band used by passive services, as allocated in the ITU RR by giving eighteen months notice.
- A5.22 We considered clearing the 10.68 to 10.7 GHz band (the '10.68 GHz band') immediately as part of the First Consultation. It is estimated that around 41%³¹ of UK households have an intruder alarm fitted but the actual number with 10.68 GHz sensors is not known. For this reason we were unable to accurately assess the cost of removing devices in the UK. We estimated that the cost of clearing the band of all 10.68 GHz equipment immediately and replacing it with 10.5 GHz equipment was likely to be disproportionate to the benefits it would bring³².
- A5.23 In addition, any such decision to clear the band would require almost all consumers with 10.68 GHz equipment fitted to participate. This raises a number of issues relating to how any such decision could be effectively communicated to consumers. For the 800 MHz band we were able to write to all licensees and provide them with the necessary information, in the 10.68 GHz band we are not able to do this. Making consumers aware of the decision and providing sufficient information to prevent consumer confusion would likely be costly and could not guarantee the clearance of 10.68 GHz devices. For all of these reasons we did not believe this to be a viable and cost effective option.
- A5.24 Instead of clearing the band of all existing equipment we decided to no longer authorise, via licence exemption, any new devices brought into use following an eighteen month period after the Proposed SRD Regulations enter into force. Existing 10.68 GHz equipment already deployed would continue to be authorised under the licence exemption, but when it falls out of service it would be replaced by equipment operating at an alternative frequency. This would reduce the impact on Earth Exploration Satellite Service (EESS) overtime and bring the UK in line with ITU RR footnote 5.340. However, we acknowledge that the potentially long life span of this equipment could mean that EESS may continue to detect emissions from the UK in the short to medium term.
- A5.25 In order to assist with the migration of Radio Determination equipment out of the 10.68 GHz band we consulted further and decided to extend the 10.577 to 10.597 GHz band (the 10.5 GHz band') by a further 5 MHz to accommodate 10.68 GHz equipment. This would enable manufacturers making 10.68 GHz equipment to modify their existing products to the new frequency band with minimal disruption. This proposal was the subject of the Second Consultation.

³¹ Friedland Home Security Week Report 2010.

³² Estimated cost range of between £27.5 - £82.5 million (based 5% of households with alarms fitted having one 10.68 GHz sensor replaced with a cost of between £50 - £150 including installation).

- A5.26 We are aware that closing the band to 10.68 GHz equipment would impose some one-off costs on manufacturers who do not currently have equipment in the 10.5 GHz band. This may also include costs associated with retesting equipment to ensure it complies with all necessary technical requirements, for example ETSI standard EN 300 440. As the 10.68 GHz band was a UK only allocation and alternative bands are used in other countries, we do not believe that this decision would cause manufacturers to have significantly increased ongoing costs. Discussions with some manufacturers of 10.68 GHz SRD equipment has indicated that they are able, with little disruption, to shift manufacture to the existing 10.5 GHz band allocation.
- A5.27 Overall we believe that costs to business are likely to be lower under a licence-exempt approach than the requirement for users to obtain individual licences. Licence exemption represents the least cost regulatory approach to authorisations on the use of spectrum. For example if use of spectrum is authorised through a licence, businesses face administrative costs associated with applying for the licence and the cost of the licence itself.
- A5.28 We consider that implementing the Proposed SRD Regulations and Proposed Handset and MSS Regulations is likely to generate a net benefit for UK businesses and consumers and at worst would have a neutral outcome (to the extent that benefits may depend on the uptake of the new opportunities afforded by each proposal). We consider that each measure is unlikely to impose costs on other users. Therefore the effect of implementing the proposed measures would be likely to be positive overall.
- A5.29 There are one-off administrative costs associated with making Statutory Instruments. We consider the implementation costs to be low, both in absolute terms and in comparison to licensing alternatives that might require an auction or the maintenance of a licence scheme. Moreover, the costs such as they are will also be offset by the benefits to business and consumer outlined above.

Not to make the regulations

- A5.30 The alternative to making the Proposed SRD Regulations and Proposed Handset and MSS Regulations would be to do nothing. By doing nothing, we mean not making the regulations and therefore requiring us to licence this equipment.

Impact of proposed regulations

- A5.31 Not making regulations at this stage would remove any additional cost imposed on Ofcom relating to making a Statutory Instrument. However, these are slight compared with the internal costs already incurred associated with the development of the policy proposals that the Proposed SRD Regulations and Proposed Handset and MSS Regulations would have implemented.
- A5.32 More importantly, if we did not implement an EU decision, the European Commission and others could begin legal proceedings against the UK, the costs of which we deem to be potentially very high both quantitatively and qualitatively, outweighing any costs we consider to be associated with correct implementation.
- A5.33 Not closing the 10.68 GHz band to new devices would mean that emissions from the UK would continue to be detected and the UK would not be aligning with the International Telecommunication Union (ITU) Radio Regulations (RR). Manufacturers of 10.68 GHz equipment could continue to sell their products without

the costs of migrating them to the new 10.575 to 10.6 GHz band. However, for those businesses that had begun to develop devices in the new bands on the basis of our published decisions this would have a financial impact.

The preferred option

- A5.34 Our preferred option is to go ahead and make the Proposed SRD Regulations and Proposed Handset and MSS Regulations. This would be consistent with European law and the policy decisions taken by Ofcom.

Do you have any comments on the Regulatory Impact Assessment?

Annex 6

Draft Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013

STATUTORY INSTRUMENTS

2013 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 8(3) of the Wireless Telegraphy Act 2006^(a), make 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 that notice in accordance with section 122(4)(c) of the Act.

Citation and Commencement

1. These Regulations may be cited as the Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2013 and shall come into force on [date] 2013.

Amendment of the Wireless Telegraphy (Exemption and Amendment) Regulations 2010

2.—(1) The Wireless Telegraphy (Exemption and Amendment) Regulations 2010^(b) are amended in accordance with the following paragraph of this regulation.

(2) In regulation 5 (short range devices), for “IR 2030 – UK Interface Requirements 2030 Licence Exempt Short Range Devices (December 2011) published by OFCOM in December 2011”, substitute “IR 2030 – UK Interface Requirements 2030 Licence Exempt Short Range Devices, published by OFCOM in [date] 2013”.

^(a) 2006 c. 36

^(b) S.I. 2010/2512, amended by S.I. 2011/3035

Annex 7

Draft Wireless Telegraphy (Exemption) (Amendment) Regulations 2013

STATUTORY INSTRUMENTS

2013 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Exemption) (Amendment) Regulations 2013

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 8(3) of the Wireless Telegraphy Act 2006^(a), make 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 that notice in accordance with section 122(4)(c) of the Act.

Citation and Commencement

1. These Regulations may be cited as the Wireless Telegraphy (Exemption) (Amendment) Regulations 2013 and shall come into force on [date] 2013.

Amendment of the Wireless Telegraphy (Exemption) Regulations 2003

2.—(1) The Wireless Telegraphy (Exemption) Regulations 2003^(b) are amended in accordance with the following paragraphs of this regulation.

(2) In paragraph 3 of Part III of Schedule 3 (network user stations),—

- (a) at the end of the list in sub-paragraph (d) (Long term evolution radiotelephones (LTE)), insert—
- “791–821 MHz
832–862 MHz

^(a) 2006 c. 36

^(b) S.I. 2003/74; relevant amending instruments are S.I. 2003/2155, S.I. 2006/2994, S.I. 2008/2426, S.I. 2010/2512 and S.I. 2011/2950

1920–1980 MHz
2110–2170 MHz
2500–2690 MHz”.

- (b) at the end of the list in sub-paragraph (e) (Worldwide interoperability for microwave access radiotelephones (WiMax)), insert—

“791–821 MHz
832–862 MHz
1920–1980 MHz
2110–2170 MHz
2500–2690 MHz”.

- (3) In Schedule 3, Part IV (interface requirement), at the end of the list insert—

““IR 2090 – UK Interface Requirement 2090 Terrestrial systems capable of providing electronic communications services in the 800MHz band, published by the Office of Communications in [date] 2013”

“IR 2092 – UK Interface Requirement 2092 Terrestrial systems capable of providing electronic communications services in the frequency bands 1920–1980 MHz and 2110–2170 MHz, published by the Office of Communications in [date] 2013”

“IR 2072 – UK Interface Requirement 2072 Terrestrial systems capable of providing electronic communications services in the band 2500 to 2690 MHz, published by the Office of Communications in [date] 2013””.

- (4) In Schedule 5, Part III (interface requirement), for “IR 2016 – UK Radio Interface Requirement for Land Mobile Satellite Systems, published by OFCOM in September 2008”, substitute “IR 2016– UK Radio Interface Requirement for Land Mobile Satellite Systems, published by OFCOM in [date] 2013”.