



Decision to make the Wireless Telegraphy (Licence Charges) Regulations 2011

Statement

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Section 1

Summary

- 1.1 This statement presents our decision to make the Wireless Telegraphy (Licence Charges) Regulations 2011 (the “Regulations”). It addresses the issues raised by stakeholders in response to the Statutory Notice¹ (“the Notice”) Ofcom published in November 2010 and explains that we have decided to make the Regulations as proposed.
- 1.2 The Regulations set out the licence charges (fees) for classes of wireless telegraphy licence issued by Ofcom under the Wireless Telegraphy Act 2006 (the “WT Act”), other than those awarded by auction. They will come into force on 3 May 2011. Further copies of the Regulations can be obtained through the Office of Public Sector Information (OPSI)².
- 1.3 The Regulations make changes to fees that reflect Ofcom’s previous decision to introduce ‘Administered Incentive Pricing’ (“AIP”) (whereby prices for annual licence fees are set above administrative costs to reflect a range of spectrum management objectives) for certain Maritime licence classes. Ofcom made its decision to introduce AIP for these licence classes in our statement of 15 June 2010, “Applying spectrum pricing to the maritime sector, and new arrangements for the management of spectrum used with radars and aeronautical navigation aids”³ (the “Maritime AIP Statement”).
- 1.4 In addition, the Regulations reduce the fee rate for Business Radio Band I users and make a number of other amendments to licence fees. All the changes have been subject to previous consultations, in line with Ofcom’s consultation principles, and Ofcom policy decisions.
- 1.5 In particular, the Regulations change the fees for the following WT Act licence classes (unless stated in the list below, the fees for licence classes remained unchanged):
 - Satellite (Complementary Ground Components of a Mobile Satellite System);
 - Coastal Station Radio (UK) Area Defined;
 - Coastal Station Radio (International) Area Defined;
 - Automatic Identification System (AIS);
 - Coastal Station Radio (UK);
 - Coastal Station Radio (International);
 - Coastal Station Radio (Marina);
 - Coastal Station Radio (Training School);

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/notice-proposals/summary/main.pdf>

² A link to the online version can be found at <http://www.legislation.gov.uk/>

³ http://stakeholders.ofcom.org.uk/binaries/consultations/aip_maritime/statement/statement.pdf

- Temporary Coastal Station Radio (Marina);
- Temporary Coastal Station Radio (International);
- Temporary Coastal Station Radio (UK);
- Differential Global Position System;
- Maritime Radio (Suppliers and Demonstration);
- Business Radio in Band I (55.75 to 68 MHz);
- Analogue television broadcasting;
- Scanning Telemetry;
- Citizens' Band radio (removing reference to them, to reflect the licence exemption for CB radio); and
- Satellite (Transportable Earth Station).

1.6 The Regulations also revoke and replace all existing regulations setting WT Act licence fees, so that all such fees, other than those for licences awarded by auction, are now consolidated in the Regulations. We have done this because the changes to fees that we proposed, and are now making, are the sixth set of changes since the previous principal fees regulations – The Wireless Telegraphy (Licence Charges) Regulations 2005 (“the 2005 Regulations”) - were made. Rather than make a further set of regulations amending the 2005 Regulations, we considered it appropriate to consolidate all the fees – new and unchanged – in a single set of regulations. This will make it easier for stakeholders to understand the regulatory environment.

1.7 The Regulations therefore revoke and replace the following Statutory Instruments:

- The 2005 Regulations⁴;
- The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006⁵;
- The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007⁶;
- The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008⁷;
- The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations 2008⁸; and
- The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2009⁹.

1.8 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the WT Act, we published a Statutory Notice (the “Notice”)¹⁰ on 19

⁴ http://www.legislation.gov.uk/ukSI/2005/1378/pdfs/ukSI_20051378_en.pdf

⁵ http://www.legislation.gov.uk/ukSI/2006/2894/pdfs/ukSI_20062894_en.pdf

⁶ http://www.legislation.gov.uk/ukSI/2007/2326/pdfs/ukSI_20072326_en.pdf

⁷ http://www.legislation.gov.uk/ukSI/2008/139/pdfs/ukSI_20080139_en.pdf

⁸ http://www.legislation.gov.uk/ukSI/2008/2106/pdfs/ukSI_20082106_en.pdf

⁹ http://www.legislation.gov.uk/ukSI/2009/66/pdfs/ukSI_20090066_en.pdf

November 2010. It gave notice of Ofcom's proposal to make the Regulations to persons representative of those appearing to us to be likely to be affected by the implementation of the proposal. It also contained a draft of the Regulations (the "Proposed Regulations") and invited comments from stakeholders on whether the Proposed Regulations properly gave effect to the policy decisions on relevant licence fees that Ofcom had previously made.

- 1.9 We received one confidential and three other responses to the Notice. In accordance with section 122(4)(c) of the WT Act, we have considered these responses. After doing so, and for the reasons set out below, we have decided to adopt the Regulations as proposed (subject to some minor editorial amendments, the details of which can be found in section 3 below).

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/notice-proposals/>

Section 2

Background

Introduction

- 2.1 Section 12 of the WT Act enables Ofcom to prescribe by regulations the fees WT Act licensees must pay to Ofcom. Section 13 of that Act permits us in prescribing those fees to use AIP (whereby prices for annual licence fees are set above administrative costs to reflect a range of spectrum management objectives).¹¹ This power goes to discharging a range of duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum (as well as our duty under section 3 of the Communications Act 2003 (“the 2003 Act”) to secure optimal use of the spectrum).
- 2.2 In order to change the fees prescribed by existing regulations, we must either amend those regulations or make new ones. We are now doing the latter.

Policy consultations and decisions

- 2.3 We last amended the 2005 Regulations in 2009. Since then we have carried out a number of policy consultations and published statements (summarised and referenced in the Notice¹²) making proposals and decisions to change the licence fees for certain WT Act licence classes. The main change that we previously decided to make was to use AIP for certain Maritime licence classes’ fees.

Statutory Notice

- 2.4 Under section 122(4) to (6) of the WT Act, we are required to publish a notice of any proposal to make regulations. The notice must state that OFCOM propose 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.
- 2.5 We published the Notice, meeting the statutory requirements, on 19 November 2010. The Notice included a copy of the Proposed Regulations. The Notice gave any person or party who wished to do so until 17 December 2010, subsequently extended to 10 January 2011, to make representations.
- 2.6 The Proposed Regulations put forward the following changes to WT Act licence fees:
- the introduction of fees for these new licence classes:
 - Satellite (Complementary Ground Components of a Mobile Satellite System);
 - Coastal Station Radio (UK) Area Defined; and
 - Coastal Station Radio (International) Area Defined;
 - amendment of the current charges for the following licence classes:

¹¹ Section 13(2) says, “OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.”

¹² <http://stakeholders.ofcom.org.uk/binaries/consultations/notice-proposals/summary/main.pdf>

- a number of Maritime licence classes;
- Business Radio users in Band I (55.75 to 68 MHz);
- analogue television broadcasting; and
- Satellite (Transportable Earth Station);
- updating references to certain licence classes (but not increasing the fees), and in some cases removing those classes, including:
 - Business Radio licence classes;
 - Satellite (Transportable Very Small Aperture Terminal) (TVSAT);
 - Citizen's Band radio (CB Radio);
 - Automatic Identification System;
 - Satellite (Transportable Very Small Aperture Terminal); and
 - Scanning Telemetry.¹³

2.7 We received four responses to the Notice and these are detailed in the next section of this document. For the reasons we set out, we do not consider that any of the responses provide a basis for amending the Proposed Regulations, and we have decided to adopt them (subject only to minor editorial changes).

¹³ In respect of the Scanning Telemetry licence class, we proposed to change the structure for charging fees prescribed for licences to use national channels, so the same fee (£7,920) is payable in each year of the licence rather than a lower fee (£6,440) in the first year. However, this will not result in an increase in fees for existing licences.

Section 3

Scope of Regulations

Responses to the Notice

- 3.1 We are grateful to the four stakeholders – one confidentially and three non-confidentially - who responded to the Notice. The non-confidential responses are published on our website. Following consideration of the responses as outlined below, we have decided to proceed with our proposals to make the Regulations.
- 3.2 In a joint response the British Ports Association and United Kingdom Major Ports Group Ltd said, "... the aim to provide incentives through AIP to licensees to use the Maritime Coastal Station Radio (International) channels will not be achieved through the application of charges for their use." They said they had drawn to Ofcom's attention on previous occasions, "... that the application of AIP charges to channels in the internationally allocated part of the spectrum do not accord with the original Cave recommendations." They also said they had previously sought to demonstrate to Ofcom that such a charging regime would have little influence on ports to change their current use of the internationally allocated part of the spectrum. And that, even if there was such influence, there is no opportunity for this part of the spectrum to be put to alternative use without a change to international agreements. They further said that a specific review by the Port of London has indicated that the proposed pricing structure could provide an incentive to use a duplex circuit in place of a simplex circuit, using 50MHz in place of the existing 25MHz allocation, which is a perverse outcome.
- 3.3 The same respondents also questioned why some channels were allocated a zero fee in the Proposed Regulations. They asked why channels 6, 8, 72 and 77 were mentioned in the consultation as it gives the impression that these inter-ship only channels are available for ship-shore use. In addition, they queried why the duplex Channels 23, 84 and 86 have been singled out for zero end user fees.
- 3.4 The General Lighthouse Authorities said they were undecided in whether the Proposed Regulations gave effect to the decisions Ofcom had previously made about changing licence fees (for example, using AIP for certain Maritime licence classes' fees). They contended that, "... the implementation is very complicated, and the way in which coverage and congestion have been determined may not be appropriate," and said the Proposed Regulations would not achieve the main objective of improving efficiency of spectrum use.
- 3.5 Severnvalle Media CIC said it was disappointed that Broadcasting Restricted Service Licence ("RSL") fees, "... have not been reviewed in this consultation." They proposed that the licensing charges for RSLs be reviewed for, "... RSL stations that have a clear and measurable input to their local community that results in social gain and general community spirit."
- 3.6 The confidential respondent commented on the proposed changes to licence fees for international channels. It said, "... it is our considered belief that the statement that "the continued use of Administered Incentive Pricing (AIP) will encourage more efficient use of the radio spectrum making more spectrum available to potential new uses" is fundamentally flawed for the Marine band." It based this on the contention that Marine band users do not have the choice, "... to use a narrower channel spacing either now or in the near future" and that any change to that position would

require international agreement, replacement of all relevant Maritime equipment and an acceptable transition period.

- 3.7 In response to the point made by each of the British Ports Association, the United Kingdom Major Ports Group Ltd, the General Lighthouse Authorities and the confidential respondent, concerning the policy of applying AIP to the Maritime sector, our consideration is as follows.
- 3.8 First, the consultation responses are almost wholly concerned with the underlying policy of applying AIP to certain classes of Maritime licence. This is a matter on which Ofcom has previously consulted, considered evidence and consultation responses, and made decisions, as described elsewhere in this statement (in particular, we did so as set out in the Maritime AIP Statement). We are not making that policy decision now and, as we set out in the Notice, we were not consulting on, “.... the underlying policy decisions we have already made.”
- 3.9 At least three of the consultation respondents had previously responded to the consultations on that policy matter (as, in their cases, the British Ports Association, the United Kingdom Major Ports Group Ltd acknowledge), and Ofcom considered and responded to their representations at the relevant time before making our decisions. Again, as far as relevant Maritime licence classes are concerned, that is in the Maritime AIP Statement.
- 3.10 Second, what Ofcom is now doing is consulting and deciding on whether to change the fees for certain WT Act licence classes, in particular on whether the proposed changes properly give effect to the policy decisions we previously made. None of the responses from the British Ports Association, the United Kingdom Major Ports Group Ltd or the confidential respondent go to that matter at all. That from the General Lighthouse Authorities touches on it to a limited extent when it says, “.... the implementation is very complicated, and the way in which coverage and congestion have been determined may not be appropriate.”
- 3.11 That latter response does not, however, offer any explanation or evidence in support of either of the points about complexity or appropriateness. As far as complexity is concerned, Ofcom considers that the fees will be based on clear, and previously decided, formulas taking into account the spectrum used, the area in which it is used and/or the population covered by its use. On the appropriateness of the way coverage and congestion have been determined, the response contains nothing on which Ofcom could base a view that their determination is inappropriate.
- 3.12 And, in any event, again, what our consultation was concerned with, was whether the Proposed Regulations give effect to the previously made policy decisions. We consulted and decided on the formulas and bases for the changed fees as part of those decisions. In putting forward the Proposed Regulations in the present consultation, we were indicating our view that they properly reflected our decisions and sought representations on that.
- 3.13 As to this, there is no basis in the General Lighthouse Authorities’ response, or any of the others, for a view that we have not properly reflected the relevant decisions in the proposed fees and, nor, therefore, for us to change what we proposed. For example, even if they are complicated – which Ofcom does not agree – the consultation responses do not say anything to indicate that the formulas for new and changed Maritime licence fees fail to reflect what we previously decided. And, even if their calculation is inappropriate – which again Ofcom does not agree – there is nothing to

suggest we have not properly reflected the position on coverage and congestion in relation to the relevant licence classes.

- 3.14 On the specific issue of the allocation of channels 6, 8, 72 and 77, although these are inter-ship channels there are exceptional circumstances where, with the express agreement of the Maritime and Coastguard Agency (“MCA”), these have been issued to a coast station. These channels are not generally available for ship to shore use.
- 3.15 Regarding channels 23, 84 and 86, these are used by the MCA for Maritime Safety Information (weather and hazards). They are, however, also used for search and rescue purposes under the auspices of the MCA. As access to these channels is usually restricted for this use we believe that, in these circumstances, they should not attract an end user fee.
- 3.16 Severnvale Media CIC is correct that we did not in the Proposed Regulations and the Notice put forward changes to Broadcast RSL fees. Again, as we set out in the Notice, we were consulting only on whether the Proposed Regulations correctly reflected earlier published policy decisions. The licence fee changes in the Proposed Regulations had already been subject to separate fee review consultations and such decisions. We have not done such a review in relation to Broadcast RSL fees, still less a general review of all licence fees and nor were we conducting a general consultation on licence fees. This does not, of course, preclude a future review of RSL fees (or others).

Amendments to Regulations

- 3.17 Notwithstanding our decision to make the Regulations, since we published the Proposed Regulations we have made some minor editorial amendments which are reflected in the Regulations. These do not affect the licence fee changes that we proposed to make in the Notice.
- 3.18 First, we have revised the definition of “excluded channels” in respect of certain Maritime channels, contained in regulation 2(4), to correct an error in the channel allocation numbers.
- 3.19 Second, we have made a minor change to the drafting of regulations 4(1) (c) and (d), to reflect the fact in the Satellite (Earth Station Network) licence class both a fixed *and* a variable sum may be payable. The relevant provisions of the Regulations (with the amendments **highlighted**) read:

“..... (c) the fixed sum, **if any**, specified in; **and**

(d) the variable sum, **if any**, determined in accordance with the provisions of,

that Schedule.”

- 3.20 This change corrects an oversight in the drafting of the Proposed Regulations. It does not increase the fees payable by any licensee.
- 3.21 Third, we have also updated the definition of “charity” in regulation 5(3) to reflect changes in the legislative provisions that define charities.

- 3.22 Fourth, in light of the changes announced by Ofcom on 6 January 2011 regarding the liberalisation of the Public Wireless Network (2G Cellular Operator) licences,¹⁴ we have amended the reference to this licence class in Schedule 2 of the Regulations. The new licence class name is Public Wireless Network.
- 3.23 Fifth, we have removed the 3.5 GHz frequency from the name of the Spectrum Access 3.5, 3.6 GHz licence class also referred to in Schedule 2 of the Regulations. This was included in error. The 3.5 GHz Spectrum Access licences was awarded by auction and do not incur licence fees under the Regulations.
- 3.24 Sixth, in the provisions of Schedule 2 which set out the fees for the Business Radio (Technically Assigned) licence class, we have made expressly clear that the fees payable will be either those in paragraph (a) or those in paragraph (b). We have done so by adding the words, "Subject to paragraph (b)," to the beginning of paragraph (a).
- 3.25 Seventh, there was an error in the provisions of paragraph (b)(i) of Schedule 2 of the Proposed Regulations relating to the fees for varying a Programme Making and Special Events Low Power licence. It should have referred also to the fees payable where such a licence is varied by adding a channel listed in paragraphs (a) (vi) and (vii) of the Schedule as it relates to Programme Making and Special Events Low Power licences. This is corrected in the Regulations.
- 3.26 Finally, in column 3 of the table in Part 3 of Schedule 4 (relating to the fees for Satellite (Transportable Earth Station) licences), the Proposed Regulations incorrectly referred to 15.5 GHz. This typographical error has been corrected to refer to 14.5 GHz in the Regulations.

Final scope of Regulations

Ofcom's decision

- 3.27 Accordingly, Ofcom has decided to make the Regulations as proposed, subject to the minor editorial changes described. The Regulations were made on 14 April and come into force on 3 May April 2011. They are summarised below.

Extent of application

- 3.28 The Regulations will apply in the United Kingdom, the Channel Islands and the Isle of Man, subject to formal adoption by the Island Authorities.

The Regulations

- 3.29 Regulation 1 sets out the citation – the way the Regulations may be referred to - and their commencement date of 3 May 2011.
- 3.30 Regulation 2 sets out the provisions concerning the interpretation – in particular, the definition of key terms - of the Regulations. Amongst other things, the regulation updates the legislation in relation to the WT Act and removes references to the previous legislation now superseded.
- 3.31 Regulation 3 provides for the revocation of the 2005 Regulations and regulations that amended the 2005 Regulations.

¹⁴ <http://media.ofcom.org.uk/2011/01/06/ofcom-opens-up-more-frequencies-for-3g-services/>

- 3.32 Regulation 4 provides the mechanism for prescribing fees. It is the substantive provision introducing the detail in Schedule 2, and other Schedules, of the Regulations, which detail provides the fees, or the method of their calculation, for individual licence classes. The provisions and effect of this regulation are substantially the same as under the 2005 Regulations. It provides for the payment for each licence class on the issue, variation and/or prescribed payment interval of a licence of the fixed and/or variable sums set out in Schedule 2 and subsequent Schedules.
- 3.33 Regulation 5 concerns concessionary fees for certain wireless telegraphy licences granted to charities concerned with emergency safety of human life.
- 3.34 Regulation 6 sets out that, in cases where a fee for a licence is not prescribed by the Regulations, Ofcom may determine the fee payable.
- 3.35 Schedule 1 specifies the regulations that are revoked by the Regulations.
- 3.36 Schedule 2 details the licence fees and payment intervals for individual licence classes and includes the new Maritime, Business Radio Band I and Satellite licence fees.
- 3.37 Schedule 3 provides the formula for calculating fees for Point to Point Fixed Links licences.
- 3.38 Schedule 4 outlines the fees payable for Satellite (Permanent Earth Station) and (Transportable Earth Station) licences.
- 3.39 Schedule 5 contains the population area classifications used in the calculation of fees for certain Business Radio and Maritime licence classes.
- 3.40 Schedule 6 sets out the fees for Business Radio (Area Defined) licences and includes the new licence fees for Band I users.
- 3.41 Schedule 7 details the fees for Business Radio (Technically Assigned) licences.
- 3.42 Schedule 8 sets out the new congestion areas used in the calculation of fees for Coastal Station Radio (International) simplex licences.
- 3.43 Schedule 9 sets out the new licence fees for Coastal Station Radio (International) simplex licences.
- 3.44 Schedule 10 sets out the licence fees for Coastal Station Radio (International) Area Defined licences for certain internationally recognised simplex channels.
- 3.45 Schedule 11 sets out the licence fees for Coastal Station Radio (International) Area Defined licences for internationally recognised simplex channels 87 and 88.
- 3.46 Schedule 12 sets out the licence fees for Coastal Station Radio (International) Area Defined licences for internationally recognised duplex channels.
- 3.47 Schedule 13 sets out the licence fees for Coastal Station Radio (UK) licences.
- 3.48 Schedule 14 sets out the licence fees for Coastal Station Radio (UK) Area Defined licences.

Annex 1

Regulatory Impact Assessment

Introduction

- A1.1 Ofcom acts consistently with the Government practice that, where a statutory regulation is proposed and made, a Regulatory Impact Assessment (“RIA”) should be undertaken. We also comply with our duty under section 7 of the 2003 Act to undertake impact assessments.
- A1.2 The analysis in this annex, together with that elsewhere in this document and set out more fully in the Notice and the consultation documents and statements referred to below (and elsewhere in the Notice and this document), is an impact assessment relating to the Regulations. It is consistent with the Government practice on RIAs and Ofcom’s duty under the 2003 Act.
- A1.3 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://stakeholders.intra.ofcom.local/binaries/consultations/better-policy-making/Better_Policy_Making.pdf.
- A1.4 In the present case, as the impact of the policy decisions that are given effect by the Regulations has already been assessed in the other documents referred to, and we included an impact assessment in the Notice, a separate assessment for the Regulations may not strictly be necessary. We nevertheless include this annex, which summarises the earlier, fuller assessments, as a matter of good practice.

The citizen and/or consumer interest

- A1.5 Our principal duty under section 3 of the 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 (efficient) 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.
- A1.6 So, in making changes to WT Act licence fees, we have considered the wider impact beyond immediate stakeholders in the radiocommunications community. As we go on to say below, we believe that our previous policy decisions and the decision we have now made to make the Regulations will be of benefit to consumers for the following reasons:

- i) continued use of Administered Incentive Pricing (“AIP”) will encourage more efficient (optimal) use of the radio spectrum making more spectrum available to potential new uses;
- ii) reduction in the fees for Business Radio Band I would help to encourage the efficient (optimal) use of the radio spectrum otherwise unused; and
- iii) removing licence classes no longer available and consolidating previous Statutory Instruments makes it easier for stakeholders to find the appropriate licence charge.

Ofcom’s policy objective

- A1.7 We have a number of duties under section 3 of 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.
- A1.8 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, to reflect a range of spectrum management objectives. In particular, in order to provide incentives - AIP - to licensees to use their spectrum more efficiently. This goes to discharging our duties under section 3 of the WT Act, as well as section 3 of the 2003 Act.

Options considered

- A1.9 Generally, the options open to Ofcom in relation to the fees charged for WT Act licences are:
- i) not to charge for WT Act licences;
 - ii) to charge cost recovery prices for those licences;
 - iii) to charge the full rate of AIP; or
 - iv) a mixture of these options.
- A1.10 More specifically, having made relevant policy decisions from these general options, as set out in the Notice, this document and in other documents referred to (most notably, the Maritime AIP statement), the principal options open to us in connection with the Proposed Regulations were:
- i) to make regulations (the Proposed Regulations) that introduce new fees for certain licences classes and change others, as well as consolidating the existing regulatory regime; or
 - ii) to do nothing (not making the Proposed Regulations and maintaining the fees in the 2005 Regulations (as amended)).

Analysis of options

A1.11 The following assesses the impact of options open to Ofcom by reference to the principal changes that would be made by the Regulations.

Make new regulations

A1.12 By making new regulations we would introduce a number of changes to the licence cost for a number of licence classes. The benefits to citizens and consumers are detailed below along with the associated costs to business.

Maritime licence classes

A1.13 A full analysis of the options for the proposed fees for Maritime licensing, and their impact, was set out in section 4 of the Maritime AIP Statement on 15 June 2010.¹⁵

A1.14 The assessment was that:

- 1.14.1 We considered our proposals will benefit citizens and consumers by helping to manage excess demand, potentially leading to release of spectrum for other users.
- 1.14.2 We considered the proposal to apply AIP licence fees to the use of spectrum in the Maritime sector is consistent with our duties and functions under the 2003 Act (as well as the WT Act), since we have a general duty to promote the “efficient use and management of the electro-magnetic spectrum for wireless telegraphy” and to secure its optimal use.
- 1.14.3 We considered that fees based on opportunity costs are likely to generate higher welfare benefits for consumer and producers overall where there is excess demand in current or alternative uses. In cases where there is no excess demand in either current or feasible alternative use, we proposed (and decided upon) administrative (cost-recovery) fees. Where frequencies are used on a private commons basis, often for safety of life purposes, we proposed (and decided upon) zero rated fees for end users (e.g. international calling and distress channels and channels used for co-ordinated search and rescue).
- 1.14.4 We identified the distribution of financial impacts of these detailed fees structures on different types of licensees. We commissioned independent consultants Helios Technology Ltd to make a detailed assessment of the relevant fees impacts on individual licensees. Consequently, it was estimated that 33% of licensees would see overall decreases, 40 % (mainly those using the marina channels) will see no overall change, and 26% will see overall increases. Although some licensees have surrendered their licences and others have been granted new licences since the dataset used for the analysis set out in August 2009 was compiled, these proportions have not changed materially and are now 30%, 44% and 25% respectively (these figures do not quite add up to 100% as data was rounded to nearest whole number). Of those facing overall increases, we estimated that half will see overall increases of not more than £400 per year, and this remains the case with the current population of licences.

¹⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/aip_maritime/statement/statement.pdf

- 1.14.5 Ofcom considered specific phasing-in options for detailed fees structures (see paragraphs 7.103 to 7.109 of the August 2009 consultation on Maritime AIP)¹⁶ aimed at mitigating the transitional financial impacts that specific licensees may experience. Our proposals were aimed at reducing risks of inefficient responses to the new fees, even from the smaller organisations which are proportionately more affected.

Satellite (Complementary Ground Components of a Mobile Satellite System)

A1.15 A full analysis of the options for the proposed AIP fee level, and their impact, was set out in Annex 4 of the “Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems” statement published on 17 July 2009.¹⁷

A1.16 The assessment was that:

- 1.16.1 It remained appropriate to apply the principle of AIP to 2 GHz Satellite Mobile Satellite Systems (MSS) Complementary Ground Components (CGC) licence fees.
- 1.16.2 There was not a compelling reason to choose a rate which is different from the rate of £554,000 per 2 x 1 MHz that we proposed in our initial consultation on the matter. Our judgement was that the use of this rate strikes a reasonable balance by being a conservative number within the range of mobile AIP rates applied to existing licences.

Business Radio Band I (55.750 – 68 MHz)

A1.17 The full analysis of the options for the proposed fees, and their impact, was set out in Annex 5 of our document “Review of Business Radio licence fees in Band I” published on 26 February 2009.¹⁸ We also commissioned Analysys Mason to investigate the opportunity costs of Band I.¹⁹

A1.18 The assessment was that:

- 1.18.1 The opportunity cost for the band is zero and meant that we could reduce the fees to reflect administrative cost recovery and not AIP.
- 1.18.2 The lower fee helps to reduce the likelihood that the band will be used inefficiently.
- 1.18.3 It is unlikely that demand will exceed supply for this band, even with the lower fees proposed (and decided upon). However, if that were to happen, we would have to review the fees again and possibly the spectrum assignment mechanism.
- 1.18.4 Our preferred option was to reduce the licence fees for the band, in light of the reappraisal of its opportunity cost.

¹⁶ “Applying spectrum pricing to the maritime sector, and new arrangements for the management of spectrum used for radar and aeronautical navigation aids” published on 13 August 2009 (see http://stakeholders.ofcom.org.uk/binaries/consultations/aip_maritime/summary/aipcondoc.pdf)

¹⁷ <http://www.ofcom.org.uk/consult/condocs/cgcs2/statement/2ghzstatement.pdf>

¹⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/bandi/summary/bandi.pdf>

¹⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/bandi/annexes/report.pdf>

Satellite (Transportable Earth Station)

- A1.19 Ofcom has made available additional frequency bands for this licence class. The full analysis of the options for the proposed fees for licences to use those bands, and their impact, was set out in Section 3 of our consultation “Additional Spectrum for Transportable Earth Stations” published 13 September 2010.²⁰
- A1.20 The assessment was that:
- 1.20.1 It was appropriate to apply the same principles and approach to fees to use the additional spectrum as are applied for current use in the other bands available for this licence class.
 - 1.20.2 It was not appropriate to adopt a “from first principles” fee review for the new frequencies. This would distort the choice of frequency band an operator makes if the fees for the new frequencies were based on different principles to those used already.
 - 1.20.3 It would only make sense to develop new “from first principles” fee proposals as part of a wider review of fees for Transportable Earth Stations and licence classes sharing the use of these bands, including Fixed Links and Permanent Earth stations. We therefore believe that it will be appropriate for these fees to be reviewed as and when the comparator fees on which they are based are reviewed.
- A1.21 In our statement “Additional Spectrum for Transportable Earth Stations”, published on 17 November 2010,²¹ we confirmed our decision to go ahead with introducing the licence charges proposed in the additional frequency bands.

Consolidating the regulatory framework

- A1.22 Along with the changes in the Proposed Regulations we considered it would also be helpful and appropriate to consolidate the legislative provisions relating to WT Act licence fees. We believed that this would make it easier for stakeholders to understand the regulatory environment and reduce the administrative burden this may cause.
- A1.23 In particular, we took into account that the existing 2005 Regulations have been amended five times since they came into force. We proposed to revoke all previous licence charge regulations and replace them with a new single set of consolidated regulations.
- A1.24 Accordingly, the Proposed Regulations would revoke and replace the following regulations:
- a) The 2005 Regulations;²²
 - b) The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006;²³

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/tes-additional-spectrum/summary/tes-additional-spectrum.pdf>

²¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/tes-additional-spectrum/statement/statement.pdf>

²² http://www.legislation.gov.uk/uksi/2005/1378/pdfs/uksi_20051378_en.pdf

²³ http://www.legislation.gov.uk/uksi/2006/2894/pdfs/uksi_20062894_en.pdf

- c) The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007;²⁴
 - d) The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008;²⁵
 - e) The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations 2008;²⁶ and
 - f) The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2009.²⁷
- A1.25 We did not, and do not, believe that the revocation of the 2005 Regulations (and their amending regulations), and their replacement with a single new, consolidated set of regulations would have any adverse impact on the costs to business.
- A1.26 On the contrary, this deregulatory approach would make it easier for stakeholders to find the relevant information about applicable licence fees. This may reduce costs to business associated with this function as they would not need to cross refer between six (or seven) different Statutory Instruments.

Do nothing

- A1.27 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 2005 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.

Maritime licence classes

- A1.28 If we did not adopt new fees regulations, the 25% of Maritime licensees who would be likely to incur increased fees under the Proposed Regulations would not be affected by an increase in fees. Those 30% of licensees who would benefit from a reduction in fees (including some search and rescue organisations) would not do so.
- A1.29 The decision Ofcom had made to adopt AIP for certain classes of Maritime licence was 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 of our duties set out in sections 3 of those Acts.

Satellite (Complementary Ground Components of a Mobile Satellite System)

- A1.30 This is a new licence class. If we did not make the Proposed Regulations the fees for these new licences would not be prescribed in regulations. Stakeholders would not benefit from being able to consult the regulations to see how much a relevant licence would cost.

²⁴ http://www.legislation.gov.uk/ukxi/2007/2326/pdfs/ukxi_20072326_en.pdf

²⁵ http://www.legislation.gov.uk/ukxi/2008/139/pdfs/ukxi_20080139_en.pdf

²⁶ http://www.legislation.gov.uk/ukxi/2008/2106/pdfs/ukxi_20082106_en.pdf

²⁷ http://www.legislation.gov.uk/ukxi/2009/66/pdfs/ukxi_20090066_en.pdf

Business Radio Band I (55.750 – 68 MHz)

- A1.31 If we did not make the Proposed Regulations users of Business Radio Band I would not receive the benefits of lower licence charges referred to above.
- A1.32 The lower licence fee would reduce the likelihood that this band will be used inefficiently. Not making the Proposed Regulations, and so not reducing the fee, would therefore maintain the risk of inefficient use of the band, which would be inconsistent with our duties under sections 3 of the WT Act and the 2003 Act.

Satellite (Transportable Earth Station)

- A1.33 As noted above, Ofcom has made additional frequency bands available for this licence class. If we did not make the Proposed Regulations the fees for licences to use the additional frequency bands would not be prescribed in regulations. Stakeholders would not benefit from being able to consult the regulations to see how much a relevant licence would cost.

Consolidating the regulatory framework

- A1.34 If we did not make the Proposed Regulations stakeholders would need to consult at least six different Statutory Instruments in order to understand the regulatory framework for WT Act licensing fees (seven if we made regulations that further amended, but did not consolidate, the 2005 Regulations). By not making the Proposed Regulations Ofcom would avoid the costs of making a Statutory Instrument.

Preferred Option

- A1.35 Although difficult to quantify, we believe that, for the reasons set out in more detail in the assessments referred to above, the benefits of the previous policy decisions referred to, and of the decision to make the Regulations, are likely to exceed the costs to stakeholders of the increases in fees that will apply in some cases. If Ofcom did not update the relevant licence fees – for example, to reflect the value of the spectrum in appropriate cases, and reduce charges to reflect administrative costs in others – we risk harming the efficient use of spectrum and denying citizens and consumers the benefits of such use. We would not be acting consistently with our wider spectrum management duties, which would have repercussions in terms of economic efficiency.
- A1.36 There are one-off administrative costs associated with making a Statutory Instrument. We considered the implementation costs to be low and offset by the benefits. There may be a slight reduction in spectrum management costs in certain areas.
- A1.37 For the reasons identified in the preceding paragraphs, and the documents they refer to, we consider the benefits of making the Regulations outweigh the costs. We therefore made the Regulations.

Equality Impact Assessment

- A1.38 Following an initial assessment of our policy proposals we considered that it was reasonable to assume that any impacts on consumers and citizens arising from the 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.

- A1.39 In addition, we note that there is no available evidence to suggest the decision to apply AIP would have a significantly greater direct financial impact on particular 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.
- A1.40 We did not carry out a full Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality schemes. This was because we were not aware that our decision was 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 2

Respondents

British Ports Association & United Kingdom Major Ports Group

General Lighthouse Authorities

Severnvale Media CIC

Confidential respondent

Annex 3

Glossary

AIP	Administered incentive pricing
AIS	Automatic Identification System
CAA	Civil Aviation Authority
CB Radio	Citizens' Band Radio
CGC	Complementary Ground Component
DSO	Digital Switchover
EC	European Commission
EU	European Union
GHz	Gigahertz
MHz	Megahertz
MSS	Mobile Satellite Service
SRSP	Strategic Review of Spectrum Pricing
TVSAT	Transportable Very Small Aperture Terminal
VSAT	Very Small Aperture Terminal
WT Act	Wireless Telegraphy Act 2006