



# Ofcom's decision to make the Wireless Telegraphy (Licensing Procedures) Regulations 2010

Statement

Publication date:

19 July 2010



# Contents

Section		Page
1	Executive Summary	1
2	Background	2
3	Scope of regulations	4
Annex		Page
1	Impact Assessment	8
2	List of respondents	11

## Section 1

# Executive Summary

- 1.1 This statement confirms that, following a formal consultation, the Wireless Telegraphy (Licensing Procedures) Regulations 2010 (the “Regulations”) were made by us on 15 July 2010, and are coming into force on 9 August 2010. The Regulations can be obtained through the Office of Public Sector Information (OPSI)<sup>1</sup>.
- 1.2 The Regulations specify the time limits within which a decision on the application for the grant of a Wireless Telegraphy Act 2006 (the “WT Act”) licence must be made, notified to the applicant and published by us. They set out the requirements that must be met by prospective licensees applying for the grant of a WT Act licence. They also provide information on the terms, provisions and limitations that licensees may be subject to.
- 1.3 We have also replaced the Wireless Telegraphy Act Licences (Terms, Provisions and Limitations) 2006 booklet with a new version, the Wireless Telegraphy Act Licensing (Terms, Provisions and Limitations) 2010 booklet (the “booklet”) which the Regulations reference. It incorporates a number of changes made to licence documents since the original booklet was published in 2006. A copy of the booklet can be found on our website<sup>2</sup>. The booklet includes a sample licence for each class showing the terms, provisions and limitations that apply.
- 1.4 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the WT Act, we published a Statutory Notice<sup>3</sup> (the “Notice”) on 9 April 2010 containing a draft of the Regulations (the “Proposed Regulations”) and invited comments from stakeholders.
- 1.5 We received four responses to the Notice. A summary of the responses and our comments on these can be found in Section 3 of this document. Having carefully considered the responses to the Notice we have amended the Proposed Regulations to take onboard some of the comments that we received. This statement confirms that we have made the Regulations which will come into force on 9 August 2010.

---

<sup>1</sup> A link to the online version can be found at <http://www.opsi.gov.uk/>

<sup>2</sup> <http://licensing.ofcom.org.uk/binaries/spectrum/regulations-technical-reference/rules/licensing-procedures2010.pdf>

<sup>3</sup> [http://www.ofcom.org.uk/consult/condocs/wt\\_regs2010/](http://www.ofcom.org.uk/consult/condocs/wt_regs2010/)

## Section 2

# Background

2.1 Under sub-paragraph 1(1) of Schedule 1 to the WT Act (which is given effect by section 10 of the WT Act), an application for the grant of a WT Act licence is determined in accordance with procedures prescribed in regulations made by Ofcom. The regulations must specify the time limits for us to deal with the grant of a licence and specific requirements that must be met by the applicant. The Proposed Regulations set out:

- a time limit of no more than six weeks from receipt of an application, for a decision to be made, notified to the applicant and published;
- details that we require from and about applicants when applying for a WT Act licence;
- information on the type of service, transmitter location and transmission characteristics we require from applicants when applying for a WT Act licence;
- an overview of the general information contained in a licence regarding the terms, provisions and limitations of licences; and
- additional information required for specific licence classes.

2.2 We have replaced the previous regulations in order to take into account a number of changes that have been implemented since they came into force in 2006. These include:

- implementation of the WT Act, replacing the previous 1949 and 1998 Wireless Telegraphy Acts;
- changes to the site clearance process;
- changes in the booklet to reflect changes made to licence classes; and
- updates to references to the Radio Regulations, published by the International Telecommunications Union, as reflected in the 2008 edition.

2.3 In addition we also proposed to update the Wireless Telegraphy Act Licences (Terms, Provisions and Limitations) 2006 booklet in order to reflect a number of changes that have occurred since 2006. The 2006 booklet specified the conditions under which each class of licence is granted and includes a sample licence for each class. Most of the changes were administrative and reflect current policies that were introduced through consultation, and included:

- replacing references to the Wireless Telegraphy Acts 1949 and 1998 with the WT Act;
- removal of the Citizens' Band radio licence class as it is now licence exempt;

- removal of the Community Audio Distribution System licence class as it is now licence exempt;
- removal of the old Business Radio licence classes and replacing them with the new licence classes that superseded them;
- changes to site clearance process; and
- inclusion of the updated Ship radio licensing process now carried out by Ofcom.

## Section 3

# Scope of regulations

## Responses to the Notice

- 3.1 We received four responses to the Notice.
- 3.2 JFMG commented that in Part 3 of the Schedule we should remove “UK Wireless Microphone (Annual)” and the “UK Wireless Microphone (Biennial)” classes of licence. These are free roaming and therefore there is no need to provide additional information on the location or the time of use.
- 3.3 We would like to thank the JMFG for this information and we have amended Part 3 of the Regulations accordingly.
- 3.4 The Civil Aviation Authority (“CAA”) commented that in regulation 2(a) of Part 1 of the Schedule it is the European Aviation Safety Agency (“EASA”) or CAA approval number which is required rather than the equipment serial number. They also advised of the need to review the licence class names to ensure consistency between definitions taking into account both national and international requirements.
- 3.5 In line with advice given by the CAA concerning regulation 2(a) we have amended the text. It now reads “the make, model and approval number (issued by either the European Aviation Safety Agency or by the Civil Aviation Authority) of the station or apparatus for which authorisation is sought”. Regarding the comments concerning licence class names, we understand that this is an ongoing process and we will co-operate with the CAA to ensure that the definitions accurately reflect the type of usage.
- 3.6 Another respondent made a number of comments concerning the Part 1 of the Schedule. They advised that:
- regulation 1(b) concerning the number of aircraft with which the station is intended to communicate in any day was badly phrased and ambiguous;
  - regulation 1(c) concerning the level of radio traffic for which authorisation is sought was incomprehensible and could mean a number of things;
  - regulation 2 concerning aircraft transportable asks about specific aircraft whilst the transportable nature of the devices means it could be used in a number of aircraft;
  - regulation 2(b) concerning the registration number and make and model of the aircraft on which the station will be established or apparatus installed would not be able to be properly adhered to in some cases. No UK aircraft have a registration number as all are alphabetic and some aircraft in the UK are not registered so would not be able to supply these details; and
  - regulation 2(c) concerning the take-off weight of that aircraft and the intended use of that aircraft could not properly be adhered to. The take-off weight will be different for every flight and advised that the term most often used is Maximum Take Off Mass (MTOM). The intended use of the aircraft will often change from flight to flight.

### 3.7 In response to these comments:

- 3.7.1 We have amended the text in 1(b) in order to clarify the information requested to “the expected intensity of aviation activity, including number of aircraft and aircraft movements”.
- 3.7.2 Regulation 1(c) has been changed to “the type of air traffic service that the applicant intends to provide”. This better reflects the terminology in the Aeronautical Ground Station application form.
- 3.7.3 We are not changing regulations 2 (b) to (c).

### 3.8 The Joint Radio Company (JRC) had no comments on the Proposed Regulations but did have a number of issues with the booklet. They advised that it largely relates to historic practices and needs to be revised to reflect the way in which radio systems and business practices have changed. They made a number of detailed comments which are listed below.

- Condition 4 on radio equipment use concludes “The Licensee must ensure that the Radio Equipment is used only by persons who have been authorised by the Licensee to do so, and that such persons are made aware of, and of the requirement to comply with, the terms of the Licence.” They advise that many modern systems are ‘machine-to-machine’ communication where there is no ‘person’ directly using the equipment. A more general statement such as “The Licensee must ensure that the radio equipment is only used in conformance with the terms of the licence” would be more appropriate for current usage patterns.
- For Business Radio the schedules in various places refer to “messages”. They advise that this relates back to the days of mobile radio being exclusively a voice based system and would be better if replaced by the generic term ‘data’. They also note that the schedules refer in various places to “the business of the licensee” and that the person using the radio system may be using it in furtherance of their own business, not “the business of the Licensee”. They propose to replace this with “such use as authorised by the licensee”.
- In paragraph 3(d) of the Business Radio Area Defined Licence Schedule they highlight the requirement to maintain location records of all “Radio Equipment” and presume that this is not the intention and that this should only apply to Base Stations however if this is correct and excludes the mobile and handheld units, then according to Paragraph 7 on Power Spectral Density, there is no restriction on the mobile radiating in excess of -116dBm outside the licensed area.
- Fixed Links Paragraph 3 in the schedule to Point-to-Point Fixed links relates to the old 1.5 GHz band which was closed at the end of 2007 and that all links having now been de-commissioned. They question why it is necessary to continue to make reference to this band.
- For Scanning Telemetry the document makes reference to the former way in which the band was managed for non-utility users. There appears to be no reference to the licensing regime for the major users of the band, namely Water, Gas and Electricity Industries and ask whether this is an omission or that their use covered elsewhere.

### 3.9 We would like to thank JRC for their comments regarding the terms set out in the booklet. The booklet provides a copy of the licences currently issued by Ofcom. We



take onboard the comments made by JRC and when the licences are next reviewed we will consider these views.

- 3.10 In response to the question concerning the definition of “Radio Equipment” we would like to point out that this term is defined in part 1 of Schedule 1 of the licence. For mobile Radio Equipment, due to its roaming nature, it is acceptable for the licensee to keep records of points three and four of part 3(d). The requirement of power spectral density of not more than -116 dBm/12.5kHz from a single transmitter at and beyond the geographical boundary(ies) specified in Schedule 2 is applicable to all Radio Equipment.
- 3.11 In response to the point JRC raised concerning the omission of information for some Scanning Telemetry licensees, we would like to point out that these users (e.g. Water, Gas and Electricity providers) all operate under one of four national licences. The Regulations and the booklet provide information on licences that are currently available from Ofcom, and this is not the case regarding these licences. We no longer issue Scanning Telemetry national licences and therefore have not included them in the regulations or in the booklet.

## **Final scope of the Regulations**

### **The Legislative Framework**

- 3.12 We can exempt the establishment, installation and use of wireless telegraphy equipment by making Regulations under section 8(3) of the WT Act. 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.
- 3.13 Under sub-paragraph 1(1) of Schedule 1 to the WT Act (which is given effect by section 10 of the WT Act), an application for the grant of a WT Act licence is determined in accordance with procedures prescribed in regulations made by Ofcom.

### **Extent of application**

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

### **The Regulations**

- 3.15 The Regulations will make the following changes:
- 3.15.1 Regulation 2 revokes the previous regulations the Wireless Telegraphy (Licensing Procedures) Regulations 2006.
  - 3.15.2 Regulation 3 sets out the definitions which apply in this particular statutory instrument.
  - 3.15.3 Regulation 4 sets out the time limits that we will deal with a grant for a licence.
  - 3.15.4 Regulation 5 outlines the requirements that must be met for Ofcom to grant a licence.

- 3.15.5 Regulation 6 states the terms, provisions and limitations applicable to licences granted by Ofcom.
- 3.15.6 The Schedule provides information on additional information that we require for Aeronautical, Maritime, Programme Making and Special Events, Satellite Services and Science and Technology licences.

## Annex 1

# Impact Assessment

## Introduction

- A1.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the “Act”).
- A1.2 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 Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

## Background

- A1.3 Sub-paragraph 1(1) of Schedule 1 of the Wireless Telegraphy Act 2006 (the “WT Act”) states that an application for a grant of a WT Act licence is determined in accordance with procedures prescribed in regulations made by Ofcom. These procedures must include, among other things, details of the terms, provisions and limitations of a licence. This impact assessment relates to the Wireless Telegraphy (Licensing Procedures) Regulations 2010 (the “Regulations”).
- A1.4 The Regulations revoke and replace the Wireless Telegraphy (Licensing Procedures) Regulations 2006.

## The citizen and/or consumer interest

- A1.5 We take account of the impact of Ofcom’s decisions upon both citizen and consumer interests in the markets it regulates. The Regulations reflect changes to the frequencies, uses and criteria that have been made to various classes of licence since the initial regulations were first made in 2006. In particular, they incorporate the following:
- changes to licence sector names (to assist with stakeholder understanding of this regulation, to maintain consistency with other related regulations, and to reflect changes in the use of radio and convergence of technology);
  - changes to licence class structure (to more closely reflect current patterns of radio usage and our organisational requirements);
  - addition of new licence classes (as the market for radio equipment changes and advances in technology are made, it is sometimes necessary to introduce new licences classes);

- introducing new or changed use of spectrum (as part of our spectrum management responsibilities, to allow the introduction of new technology and to assist with harmonisation of radio services within the European Union, it is sometimes necessary to review the use to which spectrum is put. This means that outdated and redundant technology can be replaced with new market leading technology, thus improving the value and efficiency of the spectrum);
- removing licence classes that have been discontinued or are no longer available (as radio technology advances or the needs of the market change, certain licence classes become obsolete and can be withdrawn. In addition, our policy of deregulation and liberalisation of licensing at times results in the discontinuation of certain licence classes); and
- making it easier for stakeholders to find the appropriate licence information. Without this change citizens and consumers would need to reference two sets of wireless telegraphy licensing procedures regulations to find the necessary information they seek. This should reduce the regulatory burden placed on stakeholders.

## Ofcom's policy objective

- A1.6 The Regulations have been made in accordance with our statutory obligations and proportionately, so as to take account of the impact that they may have on citizens and consumers.

## Equality Impact Assessment

- A1.7 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.
- A1.8 In addition, we noted that there is no available evidence to suggest the decision to replace the original regulations with the Regulations would have any greater direct impact on certain groups, including groups based on gender, race or disability, or for consumers in Northern Ireland relative to consumers in the UK more generally. We did not consider that there was evidence to suggest that costs imposed on operators, would differ significantly across these aforementioned groups of consumers and citizens relative to consumers in general. This was because we would not expect the impact of supplying these groups of consumers and citizens to differ significantly from the impact of supplying 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.
- A1.9 We have not carried out a full Equality Impact Assessment in relation to race equality, equality schemes in Northern Ireland and disability equality schemes. This is because, following our initial assessment, we do not believe that the decision here is 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.

## Options considered

A1.10 The options open to us in relation to the Regulations were as follows:

- to make the Regulations; or
- to do nothing, leaving in place the existing regulations.

## Analysis of the different options

### Make new regulations

A1.11 The most efficient route to compliance with our statutory obligations was to make the Regulations.

### Do nothing

A1.12 By doing nothing, we would have been in breach of our statutory obligations under the WT Act and the UK could be open to infraction proceedings initiated by the European Commission.

## The preferred option

A1.13 Therefore, the preferred option was to make the Regulations. The benefits of this option were that we remained compliant with our statutory obligations.

## **Annex 2**

# List of respondents

**Civil Aviation Authority (CAA)**

**JFMG Ltd**

**Joint Radio Company (JRC)**

**Name Withheld**