



# Business Radio Reform

Regulatory Statement

Statement

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## Section 1

# Executive Summary

- 1.1 This Statement presents our decision to make new Wireless Telegraphy Regulations that are necessary to implement plans for the reform of licensing in the Business Radio (BR) sector. It addresses the issues raised by stakeholders in response to our consultation published in June 2008<sup>1</sup> and explains that we have decided to proceed with the Regulations as proposed. The new Regulations, which are listed below, came into force on 29 August and can be found on the Office of Public Sector Information website<sup>2</sup>
- 1.2 These are:
- The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations 2008 (SI No. 2106);
  - The Wireless Telegraphy (Register) (Amendment) (No 2) Regulations 2008 (SI No.2104); and
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) (No 2) Regulations 2008 (SI No. 2105).
- 1.3 This Statement also provides an update on the next steps and indicative timing for the changes to the BR sector.

## Background

- 1.4 The making of new Regulations was necessary to provide the legal foundation for the BR reform programme. The main changes, which were announced in our Statements<sup>3</sup> of January 2007, are as follows:
- The removal of limitations on the type of business or radio traffic carried, we have created five new licence classes to replace the 21 classes which exist at the moment. This radical reduction in the number of separate licence classes will provide for a simpler licensing structure giving licensees greater flexibility in the ways they use their radio systems as well as increased freedom to change such use;
  - The extension of spectrum trading to BR licence classes not currently tradable and to allow licensees to take advantage of a range of transfer options which are not permitted at the moment; and
  - A new licence fee structure that supports the new licensing arrangements but is based on existing fees charges principles.

<sup>1</sup>"Notice of Ofcom's proposals to make Wireless Telegraphy Regulations relating to Business Radio licences"

<http://www.ofcom.org.uk/consult/condocs/busrad/>

<sup>2</sup> <http://www.opsi.gov.uk/si/si-2008-index> the Regulations are listed by their individual Statutory Instrument (SI) number.

<sup>3</sup> "A Statement on measures to liberalise and simplify Business Radio licensing (including measures to extend trading)

<http://www.ofcom.org.uk/consult/condocs/brtrading/statement> and "Modifications to Spectrum Pricing: Statement"

<http://www.ofcom.org.uk/consult/condocs/pricing06/statement/>

## Decision on the new Regulations

- 1.5 In making our decision to bring the new Regulations into force we have taken account of the comments registered by Stakeholders during the June consultation. We received 12 responses, three of which were confidential. Non-confidential responses are published on Ofcom's website<sup>4</sup>. One respondent commented only to support our proposals, three further respondents were supportive of our objectives but did raise some concerns.
- 1.6 We are grateful for these responses. Most of the issues raised had been previously considered and dealt with at the policy consultation stage. The main issue raised by the majority of respondents related to the publication of site location details for certain licensees where it was felt that this could expose a security risk to critical national infrastructure. We have considered this point before and we continue to believe that there are strong policy reasons for making information on licences available and doing so using the WT Act Register. The provision of information is an important component in enabling a secondary market for spectrum by enabling prospective purchasers to see details of assignments which could be available for trade. There are also wider benefits in making information available on existing use as this can support self-coordination, enable pre-application planning and assist innovation.
- 1.7 The Register will provide basic information about licences such as names, contact details, class of licence, frequencies and, where relevant, the geographical area of operation. We understand the concerns raised in relation to potential security risks and note that there are ongoing discussions within Government on this issue. However, we consider that it would not be appropriate to exclude the publication of certain information for specific licensees except where we are instructed by Government to do so.

## Next Steps

- 1.8 We discussed the principles underpinning the BR reform programme in consultation documents<sup>5</sup> and subsequent statements<sup>6</sup>, published in July 2006 and January 2007 respectively. In setting out our way forward, we explained that the timing for implementing the reform measures would be dependent upon:
- making new Regulations to give the changes legal effect;
  - the implementation of new IT systems required to support the changes; and
  - completion of the licence variation process necessary to migrate assignments from the existing licences to the new licences.
- 1.9 The new Regulations provide the legal basis necessary to enable the new liberalised licence types to be issued. However, this doesn't, of itself, effect existing licences or the ability to issue new licences of the current types. The new regime will only come into effect when we:

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<sup>4</sup> <http://www.ofcom.org.uk/consult/condocs/busrad/responses>

<sup>5</sup> "Business Radio Trading and Liberalisation" <http://www.ofcom.org.uk/consult/condocs/brtrading/> "Modifications to Spectrum Pricing" <http://www.ofcom.org.uk/consult/condocs/pricing06/>

<sup>6</sup> "A Statement on measures to liberalise and simplify Business Radio licensing (including measures to extend trading) <http://www.ofcom.org.uk/consult/condocs/brtrading/statement> and "Modifications to Spectrum Pricing: Statement" <http://www.ofcom.org.uk/consult/condocs/pricing06/statement/>

- start issuing the new licences for new applications; and
  - formally vary (a process taking a number of months to transfer existing licences to the new licence types) existing licence types to the new liberalised licence classes.
- 1.10 Once all existing licences are varied there will be no licences of the current types on issue and we will tidy up the Regulations to remove reference to the existing 21 licence classes.
- 1.11 The timing for switching over to the new regime is linked to the introduction of our new computer system which has been specifically designed to support the new licence classes. The “go-live” date for this new system is expected to be around the end of this year/early next year.
- 1.12 The variation process can begin before go-live, but can’t complete until the new system is up and running. We expect to start the process before the end of the year and will keep stakeholders apprised of developments and any changes to expected start date through our website<sup>7</sup>. We will include more details of the timing and arrangements for switchover to our new licensing system and the new arrangements for BR with the variation notice.
- 1.13 During the switchover period itself there will be a date after which all new applications will be processed and issued under the new licensing regime. We will publish further details of switchover arrangements and dates nearer the time.

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<sup>7</sup> [http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/business\\_radio/](http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/business_radio/)

## Section 2

# Introduction

- 2.1 This Statement sets out our decision to make new Wireless Telegraphy Regulations necessary to implement reforms to the Business Radio (BR) sector. Making the Regulations does not in itself, change current licensing arrangements; rather it establishes the regulatory basis for the new liberalised licence types we intend to introduce under the new regime. This is one step in the process towards implementing the changes and this Statement additionally outlines our plans for the completion of the programme.

## Background

### Policy consultation

- 2.2 In July 2006 we published a range of proposals to liberalise and simplify BR licensing and to extend spectrum trading<sup>8</sup>. Liberalisation, we explained, would remove from Wireless Telegraphy (WT) licences many of the restrictions currently attached to them on how the spectrum is used. We therefore proposed a simpler and more flexible licensing structure reducing the number of licence classes from 21 to just 5 separate licence types. This would mean that licensees would have greater flexibility to use radio for a wide range of business activities without having to apply to Ofcom for permission to change the terms of their licenses.
- 2.3 Spectrum trading enables the transfer of the rights and obligations of a WT licence and although introduced to the sector in 2004 this does not currently apply across the full range of BR licences. We proposed both to extend its application to all licences and to enable further flexibility in the types of trades allowed. For example, a transfer may be “total” or “partial” (depending on whether a licensee wishes to transfer all rights and obligations or only some of them), and “outright” or “concurrent” (depending on whether the transferred rights and obligations are relinquished wholly by the seller or exercised simultaneously by both the seller and the buyer).
- 2.4 In addition to this consultation, we also published plans<sup>9</sup> to amend current fees, based upon existing charging principles, which would better reflect the new licensing structure. Following a review of responses to these publications we confirmed our intention to proceed with the implementation of our proposals in Statements issued in January 2007<sup>10</sup>.
- 2.5 At this time we also indicated that implementation of the proposals was dependent upon further key activities. These were:
- A Statutory Consultation on amendments to existing legislation necessary to authorise the proposals through updates to three Statutory Instruments (Regulations). Separate Regulations cover licence fees, spectrum trading, and

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<sup>8</sup> “Business Radio Trading and Liberalisation” <http://www.ofcom.org.uk/consult/condocs/brtrading/>

<sup>9</sup> “Modifications to Spectrum Pricing” <http://www.ofcom.org.uk/consult/condocs/pricing06/>

<sup>10</sup> “A Statement on measures to liberalise and simplify Business Radio licensing (including measures to extend trading) <http://www.ofcom.org.uk/consult/condocs/brtrading/statement> and “Modifications to Spectrum Pricing:Statement” <http://www.ofcom.org.uk/consult/condocs/pricing06/statement/>

the Wireless Telegraphy Register (WTR) which addresses the publication of spectrum information to support the trading process;

- The development and implementation of a new computer system for licensing and spectrum management within Ofcom which would be designed to incorporate and thus facilitate the new licensing arrangements; and
- Completion of a formal process called “Licence Variation” which we are legally required to follow in order to migrate existing BR licensees from their old licences to the new ones.

## Statutory consultation

- 2.6 We took the next step towards implementing the changes to the BR sector and published a Notice<sup>11</sup> containing draft Regulations on 9 June 2008. Under section 122(4) to (6) of the Wireless Telegraphy Act 2006, we are required to publish a Notice of any proposal to make Regulations, setting out their general effect and giving an opportunity to make representations to those likely to be effected by their implementation. The time limit for making representations must be at least one month and one day from publication of the notice. Consequently we invited comments by 10 July 2008.

## Responses to the Statutory consultation and Ofcom’s decision

- 2.7 We received 12 responses to the Notice one of which was supportive of our policy objectives and raised no issues with our proposals. A number of other respondents were also generally supportive of our policy objectives but did have some concerns. The majority of these reiterated concerns previously raised at the policy consultation stage. Notably there was concern over a perceived risk to critical national infrastructure if we go ahead with plans to publish site-specific information on the WTR. Our responses to this and other issues raised in relation to spectrum trading and fees are detailed in the next section of this document. We did not feel that any of the issues raised could or should provide a basis for amending our proposals at this stage.

## The new Regulations

- 2.8 The new Regulations came into force on 29 August 2008. The versions of the Regulations proposed in the Notice have been edited subsequently to amend the legal drafting. None of these changes are material to the content or purpose of the Regulations. We would like to reiterate that bringing the Regulations into force now means that we are legally able to issue new licences but in practice we will not do so until our new systems are ready. However, having the Regulations in place provides us with the foundation to proceed with the licence variation process over the coming months.

## Update on next steps

- 2.9 We expect the new computer system, which will support the BR reforms, to be in place around the end of this year and consequently we intend to initiate the licence variation process to coincide with this. We have outlined the process along with the impact on licensees in section 4 of this document. The exact date for the start of the

<sup>11</sup> “Notice of Ofcom’s proposals to make Wireless Telegraphy Regulations relating to Business Radio licences”  
<http://www.ofcom.org.uk/consult/condocs/busrad/>



variation process has not yet been finalised but should be anticipated between October and December 2008. Should there be any delay to this timing we will publish updated information on our website and disseminate it through our stakeholder contact groups.

### **Structure of this document**

2.10 This Statement is structured as follows:

- i) Section 3 sets out our decision on the Regulations and our analysis of responses to the Statutory Notice.
- ii) Section 4 describes the licence Variation process.
- iii) Annex 1 contains the Regulatory Impact Assessment for the Wireless Telegraphy (Licence Charges) (Amendment) (No.2) Regulations 2008.
- iv) Annex 2 contains the Regulatory Impact Assessment for the Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008.
- v) Annex 3 contains the Regulatory Impact Assessment for the Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008.

## Section 3

# Ofcom's decision on making new Regulations to implement Business Radio Reform

- 3.1 We are grateful to those stakeholders who responded to our recent Statutory Notice<sup>12</sup> on proposed new Regulations to implement Business Radio ("BR") reform. Following consideration of the responses as outlined below, we have decided to proceed with our proposals to make new Regulations.

## Overview of proposals

- 3.2 We set out our intention to take the necessary next steps to deliver reform of licensing and spectrum management arrangements for BR by making three new Regulations as detailed below:
- 3.2.1 The Wireless Telegraphy (Spectrum Trading) (Amendment) (No 2) Regulations 2008. ("The Trading Regulations"). This extends spectrum trading provisions to the five new liberalised BR licence classes that will replace the existing 21 licence classes. It constitutes an extension of trading opportunities to the whole of the BR sector (previously trading applied to some licences only), and the permission to allow assignments to be subdivided and partially transferred in ways that are not currently permitted.
  - 3.2.2 The Wireless Telegraphy (Register) (Amendment) (No 2) Regulations 2008 ("The Register Regulations"). This applies the authority for Ofcom to publish basic information about licences and licensees to the new BR licence classes. Such information as licensee name and contact details, licence type, frequencies of operation and geographical area of transmission is published on an electronic register. All the licences included on the register are tradable and it is thus a vital tool for facilitating the trading process.
  - 3.2.3 The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations 2008. This sets out the fees that we will apply to the new BR licences.

## Analysis of responses

- 3.3 We received 12 responses. One respondent wished to remain anonymous and three responses were marked confidential. We have published the nine non-confidential responses in full on the Ofcom website<sup>13</sup>. A number of respondents were supportive of our objectives but raised concerns in a number of areas as discussed below.

<sup>12</sup> "Notice of Ofcom's proposals to make Wireless Telegraphy Regulations relating to Business Radio licences"  
<http://www.ofcom.org.uk/consult/condocs/busrad/>

<sup>13</sup> <http://www.ofcom.org.uk/consult/condocs/busrad/responses/>

## The Trading Regulations

- 3.4 Two respondents questioned the benefits of applying spectrum trading to the BR sector and one in particular wondered why efforts to introduce trading were not focussed upon the areas of broadcasting or mobile telephony.
- 3.5 One of our principal statutory duties is to secure optimum use of spectrum and Ofcom's overall approach to fulfilling this duty is set out in the Spectrum Framework Review (SFR). A central theme of this approach is that management of the radio spectrum can be carried out most effectively if market forces are harnessed to a significantly greater degree than has been the case in the past. Two of the key mechanisms for achieving this are spectrum trading and spectrum liberalisation. We believe this approach will:
- Promote efficient use of the radio spectrum by allowing spectrum to be transferred to, and used by those who value it most highly; and
  - Promote competition by increasing the availability of spectrum for use by the most valuable service.
- 3.6 Our plans for Business Radio extend these principles within the sector as part of a rolling programme which we believe will:
- Offer additional flexibility to licensees (there is no compulsion to trade); and
  - Improve the quality and efficiency of spectrum management.
- 3.7 Of course, there is no obligation on BR licensees to trade and no downside to a licensee from the fact that their licence is tradable. Moreover the above considerations apply to the BR sector irrespective of the development of policy towards the Broadcast and Mobile sectors where the introduction of trading needs to be considered within the context of a wider set of policy issues<sup>14</sup>.

## The Register Regulations

- 3.8 Nine respondents expressed concerns over the disclosure of site locations of Critical National Infrastructure licensees via information published on the register and so did not support the making of new Register Regulations. It was felt that publication of such details could cause a major security risk especially in the current climate where there are risks of terrorist attacks. The respondents also suggested that Ofcom had given assurances with regards to the protection of this information.
- 3.9 Two respondents went further and suggested that information should only be disclosed in respect of those licensees who indicate willingness to trade. One of these also questioned the utility of the register in relation to locating a potential trading opportunity if thousands of licence details were published on the same register.
- 3.10 Before commenting on these points, we note that the effect of the Register regulations is to enable Ofcom to publish licence information but they do not require us to do so (and it was this point to which the "assurance" related). Hence, the points made above by respondents do not have a bearing on our decision to make the

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<sup>14</sup> "Application of spectrum liberalisation and trading to the mobile sector"  
<http://www.ofcom.org.uk/consult/condocs/liberalisation/>

regulations in the form that we have; rather, they relate to the way in which Ofcom subsequently acts under the regulations.

- 3.11 In this context, we continue to believe that there are strong policy reasons for making information on licences available and doing so using the WT Act Register. The provision of information is an important component in enabling a secondary market for spectrum by enabling prospective purchasers to see details of assignments which could be available for trade. In general, markets function most efficiently when the maximum amount of information is available; in the case of spectrum markets, this includes information about individual spectrum assignments, notifications of trades and completed trades. However, there are also wider benefits in making information available on existing use as this can support self-coordination, enable pre-application planning and assist innovation. Making more information available would also be consistent with the Environmental Information Regulations.
- 3.12 The Register will provide basic information about licences such as names, contact details, class of licence, frequencies and, where relevant, the geographical area of operation. We understand the concerns raised in relation to potentially sensitive nature of some of this information. However, we consider that it would not be appropriate to exclude the publication of certain information for specific licensees except where we are instructed by Government to do so.
- 3.13 It also follows from our comments above, that to restrict the contents of the Register only to licensees who have indicated that they wish to trade could artificially restrict the opportunities that could emerge in the market from more general access to this information. As noted above, we believe there are also other benefits from the publication of this information, for example in terms of user self-management of spectrum and improved transparency, and that these benefits would be undermined by restricting the amount of information available. As regards the utility of the Register in light of the volume of records, we note that it has a search facility enabling a user to search for specific tradable bands in particular areas.
- 3.14 Finally, one respondent questioned whether publishing licensing information represented an infringement of the Data Protection Act. However, we are permitted to publish specific information relating to licences under the Communications Act 2003.

### **The Fees Regulations**

- 3.15 A small number of respondents expressed concerns over the level of fees. They commented that some of the areas classified as “congested” (thereby attracting higher fees) should not be so classified; they said that the new fees structure is difficult to understand; and they commented that fees will increase by an unacceptable rate for some licensees.
- 3.16 These are all issues relating to the policy on fee levels, which were dealt with in our 2007 Statement, rather than with the translation of this policy into Regulations which was the subject of the June 2008 consultation. However, we make a number of brief comments below.
- 3.17 In setting fees for licences in the Business Radio sector (excluding the ‘light’ category) we have adopted a single set of fee principles which apply across all types of use. Specifically the proposals take into account the following factors:
  - whether a location is highly populated;

- the extent of coverage of a radio system;
  - the demand for and level of use of a frequency band;
  - the amount of spectrum bandwidth used; and
  - whether spectrum is shared with other users.
- 3.18 We believe this approach is fair and consistent with our new liberalised approach to spectrum management and it replaces the existing price mechanisms which reflect the type of spectrum use. The more popular bands, and the more densely populated areas, have higher fees reflecting greater demand for spectrum. Conversely, less popular bands, and less densely populated areas, have lower fees which may encourage innovation or could, in time, release pressure on the more popular bands.
- 3.19 The new fees structure is fairer and more transparent than that which exists now but we accept it will take time for licensees to familiarise themselves fully with it. We have conducted a number of stakeholder workshops around the country where “look-up” tables and worked examples have been used. These will be placed on our website and we are currently investigating other mechanisms to help licensees. We will continue to work with stakeholder groups and be happy to answer questions about the new fees.
- 3.20 The majority of licensees will see only minor changes, or a reduction, in their fee level (the overall amount of fees will remain broadly unchanged as a result of the new fee rates). A small number of licensees will see large percentage increases in their fees. Where these percentage increases are very large it is usually because the existing fee levels are very low. The new fee rates result from the consistent and equitable application of charging principles across the BR sector. We will have given these licensees more than 2 years notice of the changes and they will therefore have had time to prepare for the changes.

### **Other issues**

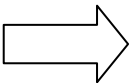
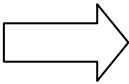
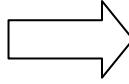
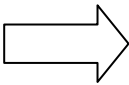
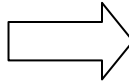
- 3.21 One respondent advocated that Ofcom should oversee a code of practice on quality of service that Business Radio service providers must sign up to. This issue falls outside the scope of the June 2008 consultation. However, the Federation of Communication Services (FCS) already operates an accreditation service to improve quality of service to customers. Ofcom is not responsible for this scheme but supports initiatives that raise the standards of service to citizen-consumers provided the scheme is fair and transparent.

## Section 4

# Licence variation

- 4.1 As already stated, the new Regulations coming into force does not in itself change current licensing arrangements. These will only apply once the new licence classes are made available for new applications and existing assignments are migrated from the old licences to the new.
- 4.2 In order to do this Ofcom must follow a formal process of licence variation as set out in Schedule 1 of the Wireless Telegraphy Act 2006. This process can be summarised as follows. We will:
  - 4.2.1 give notice in writing to individual licensees setting out what is changing for them and the reasons for this;
  - 4.2.2 allow licensees a minimum of one month to make any representations to Ofcom in respect of the notification (we may announce an extension to this timescale);
  - 4.2.3 take no more than one month to consider any such representations and to determine whether to proceed with the variation;
  - 4.2.4 notify licensees within one week of our determination, of the decision to proceed or otherwise with the Variation proposal. This notification will include details of the specific date when the change will happen;
  - 4.2.5 Issue new licences to all licensees once the variation process is complete
- 4.3 We plan to initiate the licence variation process later this year to coincide with the introduction of our new licensing and spectrum management system which has been specifically designed to support the new licensing structure. Replacing our current system is a complex process and we need to ensure that the new systems are fully ready for operational use. Consequently it may be necessary to change the date that we switchover to the new system and this will impact on the timing of the licence variation process. We will keep stakeholders apprised of developments through our website should our schedules slip beyond the end of this year.
- 4.4 To prepare for the transition period we are planning in the next month or so to make a minor change to the conditions under which new licence applications are processed. This minor revision will mean that if the applicant receives one of the current types of Business Radio licences as a result of their application, then this licence will automatically be varied onto the relevant new licence type when the transition to the new licensing arrangements come into effect.
- 4.5 During the switchover period itself there will be a date after which all new applications will be processed and issued under the new licensing regime. We will publish further details of switchover arrangements and dates nearer the time.
- 4.6 Once Ofcom issues the formal variation notice it will not be possible for licensees to request a change to their licences or to trade their licence (if in an existing tradable licence class) until the variation process is complete.

- 4.7 Stakeholders should also be aware that during the changeover to our new system there might be some disruption to our normal service. Of course, we hope to minimise this where possible.
- 4.8 We will include more information on switchover arrangements with the variation notice we send to all licensees. Additional information will be posted on our website<sup>15</sup>.
- 4.9 The licence variation process will be applied to all Business Radio (“BR”) licences as indicated in the table below. The characteristics of the new licence classes are explained in our previous consultation<sup>16</sup>

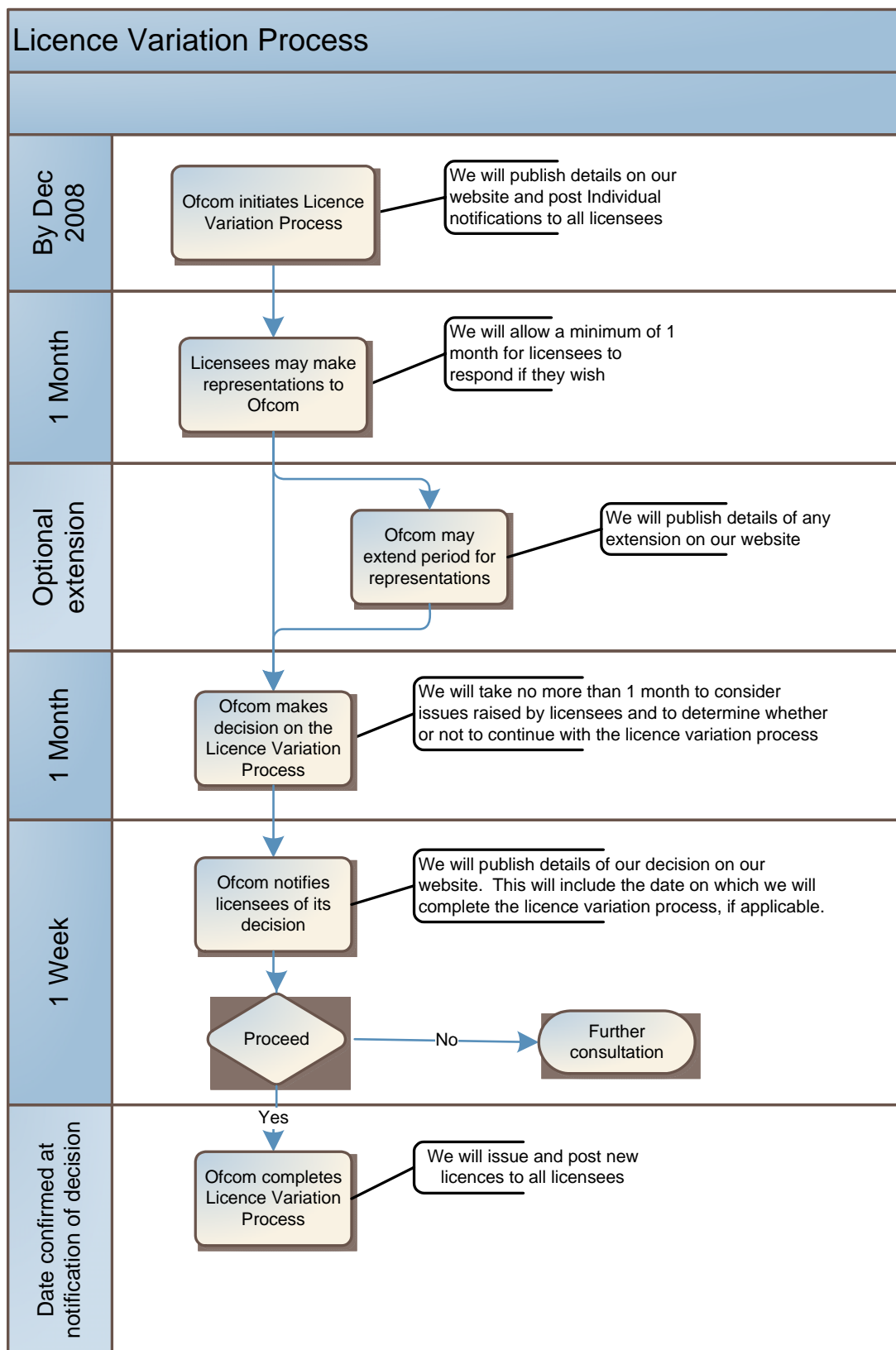
Current Licence Class	Varied to	New Licence Class
Business Radio (Public Wide Area Paging) Business Radio (Public Mobile Data, Non-Voice) Business Radio (National and Regional) Business Radio (Tetra Digital PAMR) Business Radio (CDMA Asset Tracker) Business Radio (Remote Meter Reading Operator) - Exclusive channel		Business Radio Area Defined
Business Radio (Analogue PAMR) Business Radio (Common Base Stations) Business Radio (Remote Meter Reading Operator) - Shared channels Business Radio (Wide Area Speech and Data Systems) Business Radio (Wide Area One-Way Paging and Speech Systems) Business Radio (Wide Area Distress Alarms) Business Radio (Band 1 and Band III CBS) Business Radio (IR2008 Data) Business Radio (On-Site Speech and Data Systems) Business Radio (On Site Hospital Paging and Emergencies Speech Systems)		Business Radio Technically Assigned
Business Radio (UK General)		Business Radio Simple UK
Business Radio (On-Site Local Communications) Business Radio (On-Site One-Way Paging and Speech) Business Radio (Self-Select)		Business Radio Simple Site
Business Radio (Suppliers)		Business Radio Suppliers

<sup>15</sup> [http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/business\\_radio/](http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/business_radio/)

<sup>16</sup> “Business Radio Trading and Liberalisation” <http://www.ofcom.org.uk/consult/condocs/brtrading/>

4.10 The diagram below describes the stages of the Licence Variation Process.





## Annex 1

# Regulatory Impact Assessment relating to the Wireless Telegraphy (Licence Charges) (Amendment) (No.2) Regulations 2008

## Introduction

- A1.1 In accordance with good regulatory 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 a Regulatory Impact Assessment as defined by section 7 of the Communications Act 2003 (“the Communications Act”) for amending the Wireless Telegraphy (Licence Charges) Regulations 2005.
- A1.2 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. The requirement to carry out impact assessments is reflected in section 7 of the Communications Act, which stipulates 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 We issued a consultation document and subsequent statement concerning modifications to spectrum pricing on the 6th of July 2006 and 10th January 2007 respectively. The consultation concerned making changes to a number of Wireless Telegraphy Act licence charges. The majority of these changes have already been implemented through separate regulations made in August 2007<sup>17</sup> and January 2008<sup>18</sup> the remainder are to be implemented through the Regulations to which this RIA relates.
- A1.4 Section 12 of the Wireless Telegraphy Act 2006 (“The WT Act”) permits the use of spectrum pricing by requiring us to prescribe in Regulations sums payable for WT Act licences. This power enables us to recover the cost of administering and managing Wireless Telegraphy Act licences. However, we also have a range of duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum. Consequently, section 13 of the Wireless Telegraphy Act 2006 permits us to recover sums greater than those we incur in performing its spectrum

<sup>17</sup> [http://www.opsi.gov.uk/si/si2007/ukSI\\_20072326\\_en\\_1](http://www.opsi.gov.uk/si/si2007/ukSI_20072326_en_1)

<sup>18</sup> [http://www.opsi.gov.uk/si/si2008/ukSI\\_20080139\\_en\\_1](http://www.opsi.gov.uk/si/si2008/ukSI_20080139_en_1)

management functions in order to provide incentives to licensees to use their spectrum more efficiently. This is known as Administered Incentive Pricing (AIP).

## **Proposal**

A1.5 This RIA relates to the proposal to update and modify Wireless Telegraphy licence charges for WT Act licences. The current statutory instrument governing the licence charges for WT Act licences is “The Wireless Telegraphy (licence charges) Regulations 2005 (SI 2005 N0.1378) (“the existing Regulations”). This update will amend the existing Regulations. The nature of the changes is primarily to introduce new simplified licence classes in the Business Radio sector at both cost recovery and AIP levels.

## **The citizen and/or consumer interest**

A1.6 We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. 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) continued use of AIP will encourage more efficient use of the radio spectrum making more spectrum available to potential new uses;
- ii) simplified licence charges will facilitate fee payment and reduce costs to licensees by reducing the number of transactions;
- iii) the measures proposed will reduce the regulatory burden for some licensees, offering them simplified, more flexible licences at a lower price.

## **Our policy objective**

A1.7 We have a statutory obligation to make efficient use of the radio spectrum. The WT Act 2006 enables us to charge administered incentive pricing for Wireless Telegraphy Act licences. Additionally, 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 simplify and rationalise licence products available to consumers.

## **Options considered**

A1.8 The options open to us in relation to the fees charged for WT Act licences generally fall into the following categories:

- i) Not to charge for WT Act licences;
- ii) To charge cost recovery prices for WT licences;
- iii) To charge the full rate of AIP identified by independent consultants; or
- iv) A mixture of these options.

## Analysis of options

- A1.9 In order to continue to meet our spectrum management duties, we propose to continue to charge for licences using a mixture of these options. Although our general approach remains unchanged, in order to introduce a simplified, more flexible licensing approach, it is necessary to amend the way that licence charges are applied. We will continue to charge the AIP rate identified by Indepen in the 2004 Spectrum pricing report. However, for some low power licences that do not require technical assignment, it is beneficial to both licensees and ourselves to charge on a cost recovery basis. For licensees who use a large amount of valuable spectrum, we believe that in recognition of its duty to use the spectrum efficiently it is important that the value of the spectrum is reflected in its cost.

## Benefits

- A1.10 In general, the proposed regulations will reduce the regulatory burden to licensees by simplifying the licence charging regime. Continued use of AIP, where relevant, will help to ensure efficient use of spectrum.

## Costs to business

- A1.11 The cost of certain WT Act licences will increase as a result of the introduction of these Regulations whilst others will decrease. These changes are necessary in order to introduce a simplified licensing regime. The increase in costs to some businesses needs to be offset against the benefits of introducing a simplified tradable licensing regime.

## Costs to us

- A1.12 There are one-off administrative costs associated with making a Statutory Instrument. We consider the implementation costs to be low and offset by the benefits outlined in section 2 of the consultation document<sup>19</sup>. There may be a slight reduction in spectrum management costs in certain areas.

## Conclusion

- A1.13 For the reasons identified in the preceding paragraphs, specifically in relation to the introduction of a simplified tradable licensing regime, we consider the benefits of making the Amendment Regulations outweigh the costs. We therefore propose to amend the Wireless Telegraphy (Licence Charges) Regulations 2005. We will review the decision to implement the changes when the licence charges are reviewed every 3-4 years.

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<sup>19</sup> <http://www.ofcom.org.uk/consult/condocs/pricing06/>

## Annex 2

# Regulatory Impact Assessment relating to the proposed Wireless Telegraphy (Register) (Amendment) (No.2) Regulations

## Introduction

- A2.1 In accordance with good regulatory 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 a Regulatory Impact Assessment as defined by section 7 of the Communications Act 2003 (“the Communications Act”) for amending the Wireless Telegraphy (Licence Charges) Regulations 2005.
- A2.2 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. The requirement to carry out impact assessments is reflected in section 7 of the Communications Act, which stipulates 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

- A2.3 We issued a consultation document and subsequent statement concerning Business Radio trading and liberalisation on the 6th of July 2006 and 10th January 2007 respectively. The consultation and subsequent statement led to a decision to implement the creation of a new simplified, flexible and tradable licensing regime. An amendment to the Wireless Telegraphy (Register) Regulations 2004<sup>20</sup> is required in order to bring this decision into effect.

## Proposal, purpose and intended effect

- A2.4 In order to enhance the general development of a secondary market for the right to use spectrum, we have established and maintain a register about spectrum licences - the Wireless Telegraphy Register.
- A2.5 The intended effect of this proposal is to enable information about the new Business Radio Licences to be published in this Wireless Telegraphy Register. In so doing, this should facilitate spectrum trading by providing information which will enable

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<sup>20</sup> <http://www.legislation.gov.uk/si/si2004/20043155.htm>

potential buyers to find out, who holds what frequencies and the constraints on the use of the specific frequencies or bands.

### **Costs and benefits**

- A2.6 We carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004, (published December 2004), which established the Register. This proposed amendment to those regulations only has the effect of including the frequencies designated for Business Radio use within the regulations. We therefore consider that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- A2.7 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for these regulations. Those conclusions were that the benefits of having a register exceeded the costs that would be incurred by business and ourselves in establishing and maintaining the register, and in publishing information. Indeed, the costs to us of the proposed regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to us would be minimal and limited to updating the register for the frequencies allocated to Business Radio use of spectrum. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.
- A2.8 Moreover, now that the register has been set up, the additional costs of including the Business Radio frequencies within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

### **Business sectors affected**

- A2.9 The main business sector affected by this proposal is the Business Radio sector. However, other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

### **Conclusions**

- A2.10 Our assessment is that the benefits of including all Business Radio frequencies within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.

## Annex 3

# Regulatory Impact Assessment relating to the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations

## Introduction

- A3.1 In accordance with good regulatory 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 a Regulatory Impact Assessment as defined by section 7 of the Communications Act 2003 (“the Communications Act”) for amending the Wireless Telegraphy (Licence Charges) Regulations 2005.
- A3.2 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. The requirement to carry out impact assessments is reflected in section 7 of the Communications Act, which stipulates 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

- A3.3 We issued a consultation document and subsequent statement concerning Business Radio trading and liberalisation on the 6th of July 2006 and 10th January 2007 respectively. The consultation and subsequent statement led to a decision to implement the creation of a new simplified, flexible and tradable licensing regime. An amendment to the Wireless Telegraphy (Spectrum Trading) Regulations 2004<sup>21</sup> is required in order to bring this decision into effect.

## Proposal, purpose and intended effect

- A3.4 This Impact Assessment for the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007 relates to our decision to implement a more flexible tradable licensing regime for Business Radio licences. The purpose of these regulations is to permit the transfer of all rights and obligations relating to all Business Radio licences, also known as spectrum trading. We intend to permit outright total transfers as well as concurrent and partial transfers.

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<sup>21</sup> <http://www.england-legislation.hmso.gov.uk/si/si2004/20043154.htm>



## **Costs and benefits to business**

- A3.5 We considered the benefits of spectrum trading in the Regulatory Impact Assessment in the Spectrum Trading and Wireless Telegraphy Register Regulations published in December 2004 (“the 2004 impact assessment”). It concluded that the likely benefits of spectrum trading greatly outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded (and for whom the benefit of the spectrum trade should exceed the costs anyway). This analysis of the general benefits of introducing spectrum trading should also apply to all Business Radio licences.
- A3.6 We considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers. We can see no reason why the 2004 impact assessment’s general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer in relation to all Business Radio licences.

## **Costs to us**

- A3.7 We would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up, and including the Spectrum Bands within the framework should require little additional cost. The cost of making the regulations is minimal in comparison to the expected benefits of introducing trading to the entire Business Radio sector.

## **Business sectors affected**

- A3.8 The main business sector affected by this proposal is the Business Radio sector. Other business sectors may benefit from the introduction of trading to all Business Radio licences by the implementation of these regulations.

## **Conclusion**

- A3.9 We have assessed the impact of allowing spectrum trading in all Business Radio spectrum and have found that the costs are likely to outweigh the benefits for all types of transfer. We will continue to monitor the effect of the introduction of trading to this sector.