



# Decision to make the Wireless Telegraphy (Exemption) (Amendment) Regulations 2008

Statement

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## Section 1

# Executive Summary

- 1.1 This statement confirms that, following a formal consultation, the Wireless Telegraphy (Exemption) (Amendment) Regulations 2008 (No. 236) (the “Amending Regulations”) were made by us on 6 February 2008, and are coming into force on 27 February 2008. The Regulations will be available through the Office of Public Sector Information (OPSI) later this month<sup>1</sup>.
- 1.2 The Amending Regulations exempt the use of Digital PMR446 “walkie talkies” operating in the frequencies around 446 MHz.
- 1.3 At this time we will not be implementing the proposed changes we consulted on for the devices operating in the 169.4 – 169.6 MHz band in order to comply with a European Commission Decision<sup>2</sup> (the “Decision”). This is due to us receiving a Detailed Opinion from the European Commission on the draft Radio Interface Requirement document IR2030.
- 1.4 Before deciding to make the Amending Regulations, in accordance with the requirements of section 122(4) of the Wireless Telegraphy Act 2006 (“the Act”), on 23 November 2007 we published a Statutory Notice<sup>3</sup> (the “Notice”) containing a draft of the Amending Regulations and inviting comments from stakeholders.
- 1.5 We received no objections to the Notice regarding Digital PMR446 and therefore have proceeded with making the Amending Regulations to exempt these devices.

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

<sup>2</sup> A copy of the Decision is included at Annex 4 and it is available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_344/l\\_34420051227en00470051.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_344/l_34420051227en00470051.pdf).

<sup>3</sup> Available at [http://www.ofcom.org.uk/consult/condocs/wireless\\_exemption/wireless\\_exe.pdf](http://www.ofcom.org.uk/consult/condocs/wireless_exemption/wireless_exe.pdf).

## Section 2

# Introduction

## Digital PMR 446

- 2.1 Public Mobile Radio (“PMR446”) is the name given to “Walkie Talkies” operating in frequencies around 446 MHz. These devices provide short range, voice only, communication offering a basic, radio service for business and non business users. The analogue versions of these radios are already exempted from the need for a wireless telegraphy licence.
- 2.2 Digital technology offers a number of potential advantages over analogue including providing better quality communication and enhanced functionality. Since 2004 we have been working with colleagues in Europe to explore if additional spectrum could be identified to support a digital version of this service. The outcome of these discussions was that the frequency band 446.1 – 446.2 MHz was identified as a suitable allocation for Digital PMR446 equipment.
- 2.3 We have now made regulations to allow the use of Digital PMR 446 equipment operating in the 446.1 – 446.2 MHz band on a licence-exempt basis.

## Commission Decision 2005/928/EC - 169.4 – 169.8125 MHz

- 2.4 The Decision distinguishes between two parts of the 169.4 – 169.8125 MHz band, the upper and lower part. Our proposals in relation to upper part of the band 169.6125 - 169.8125 MHz are addressed as part of a separate consultation published on 10 October 2007 that closed on 5 December 2007<sup>4</sup>. We intend to publish a statement on this shortly.
- 2.5 In December 2006 we made the Wireless Telegraphy (Exemption) (Amendment) Regulations 2006 (the “2006 Amending Regulations”)<sup>5</sup> which made a series of amendments to the original Wireless Telegraphy (Exemption) Regulations 2003 (the “Exemption Regulations”). One of those changes was to implement the part of the Decision relating to 169.4 – 169.6 MHz band to allow the use of Meter Reading, Asset Tracking, Social Alarms and Hearing Aids on a licence-exempt basis.
- 2.6 More recently we issued a consultation on 18 September 2007 closing on 27 November 2007 (the “General Consultation”) proposing a number of further changes to the Exemption Regulations as part of our review of all the equipment covered by these regulations<sup>6</sup>. That consultation included a policy proposal to make some minor changes to the equipment specifications for Asset Tracking and Meter Reading devices, specifically to increase the maximum permitted radiated power for these devices from 10 mW to 500 mW which had been implemented by way of the 2006 Amending Regulations.
- 2.7 Shortly after the General Consultation was published, the Radio Spectrum Committee issued guidance to Member States on how to interpret the Decision<sup>7</sup>.

<sup>4</sup> Available at <http://www.ofcom.org.uk/consult/condocs/169mhz/169mhz.pdf>

<sup>5</sup> Available at <http://www.opsi.gov.uk/si/si2006/20062994.htm>.

<sup>6</sup> Available at <http://www.ofcom.org.uk/consult/condocs/wtle/wtle.pdf>

<sup>7</sup> A copy is attached in Annex 5 and the document is available at [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/docs/ref\\_docs/rsc21\\_public\\_docs/rscom07\\_67\\_20\\_05\\_928\\_interpr.pdf](http://ec.europa.eu/information_society/policy/radio_spectrum/docs/ref_docs/rsc21_public_docs/rscom07_67_20_05_928_interpr.pdf)

After reviewing the 2006 Amending Regulations, in light of the Commission's guidance, we decided that IR2030 needed to be revised and therefore we would need to make a minor amendment to the Exemption Regulations in order to ensure that we comply with the Decision in the way that has been indicated by the Commission in its recent guidance. The proposed changes were outlined in Annex 3 of the Notice. This change increased the Radiated Power for Meter Reading, Asset Tracking, Social Alarms and Hearing Aids in the 169.4 – 169.6 MHz band from 10 to 500 mW.

## Detailed Opinion on IR2030

- 2.8 One of the requirements of the European Radio and Telecommunications Terminal Equipment Directive (1999/5/EC) is to notify the European Commission of amendments to our Interface. We therefore submitted the Interface Requirement IR2030, which relates to Short Range Devices (SRDs) and included the changes required by the Commission guidance, to the. Following that submission we received a Detailed Opinion from the European Commission highlighting areas where the draft IR 2030 needs amendment prior to adoption.
- 2.9 As a result of this Detailed Opinion we are unable to adopt the proposals for Meter Reading, Asset Tracking, Social Alarms and Hearing Aids operating in the 169.4 – 169.6 MHz band before 11 April 2008. We have therefore decided to withdraw this amendment to the Exemption Regulations at this time.
- 2.10 We intend to make regulations to implement the proposed changes for Meter Reading, Asset Tracking, Social Alarms and Hearing Aids following the elapse of the standstill period for IR2030.
- 2.11 Further, the SRD Decision<sup>8</sup> is nearing finalisation and we expect the Decision to be issued in final form in the near future. Further changes may be required to IR2030 as a result of the forthcoming SRD Decision so in our view there is merit in waiting to see the implications of that Decision before making further changes to IR2030.

## Implementation

- 2.12 To implement the Digital PMR 446 changes, we have made a new Statutory Instrument, the Amending Regulations, on 6 February 2008, which come into force on 27 February 2008.
- 2.13 Exemption is realised by describing the details of equipment and the parameters under which it may be used in regulations that exempt users of such equipment from the need to hold a Wireless Telegraphy Act ("WT Act") licence provided they comply with the terms of those regulations.
- 2.14 In order to implement the Decision, and in accordance with our statutory obligations, a draft of the Amending Regulations was published and subject to a six week consultation period. We consulted on the amendments to the Exemption Regulations between 23 November 2007 and 7 January 2008 in the document "Proposal to amend the Wireless Telegraphy (Exemption) Regulations 2003", available on the Ofcom website<sup>9</sup>.

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<sup>8</sup> Available at [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/docs/ref\\_docs/rsc21\\_public\\_docs/rscom07\\_56draft\\_amend\\_srd.pdf](http://ec.europa.eu/information_society/policy/radio_spectrum/docs/ref_docs/rsc21_public_docs/rscom07_56draft_amend_srd.pdf).

<sup>9</sup> Available at [http://www.ofcom.org.uk/consult/condocs/wireless\\_exemption/wireless\\_exe.pdf](http://www.ofcom.org.uk/consult/condocs/wireless_exemption/wireless_exe.pdf).

- 2.15 We received no objections to the draft Amending Regulations. Consequently, we have not revised the proposals and have made the Amending Regulations, with the exception of removing the updated reference to IR 2030. .
- 2.16 Radio Interface Requirement IR2009 has now been updated to include the relevant technical parameters and can be found on our website<sup>10</sup>.
- 2.17 This statement confirms that we have amended the Wireless Telegraphy (Exemption) Regulations 2003.

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<sup>10</sup> Available at [http://www.ofcom.org.uk/radiocomms/ifi/tech/interface\\_req/](http://www.ofcom.org.uk/radiocomms/ifi/tech/interface_req/).

## Section 3

# Scope of Regulations

## Responses to the Notice

- 3.1 We received no objections to the Notice regarding the exemption of Digital PMR446 devices.

## Final scope of the Regulations

- 3.2 Under section 8(1) of the WT Act it is an offence to install or use equipment to transmit without holding a licence granted by Ofcom, unless the installation or use of such equipment is exempted. Ofcom can exempt the establishment, installation and use of wireless telegraphy equipment by making regulations under section 8(3) of the WT Act.
- 3.3 The Amending Regulations make one minor amendment to the Exemption Regulations to allow for the use of Digital PMR446 equipment on a licence exempt basis, by amending the reference in Part III (interface requirement) of Schedule 7 (PMR), to incorporate a reference to the latest IR 2009 published by Ofcom in November 2007<sup>11</sup>.
- 3.4 . This achieved by a minor amendment to the Exemption Regulations which

## Extent of application

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

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<sup>11</sup> Available at [http://www.ofcom.org.uk/radiocomms/ifi/tech/interface\\_reg/](http://www.ofcom.org.uk/radiocomms/ifi/tech/interface_reg/).

## Annex 1

# Regulatory Impact Assessment

## Introduction

- A1.1 In accordance with Government practice, where a statutory regulation is proposed, a Regulatory Impact Assessment ("RIA") must be undertaken.
- A1.2 The analysis presented here, represents an RIA as defined by section 7 of the Communications Act 2003 ("the Communications Act") for the Wireless Telegraphy (Exemption) (Amendment) Regulations 2008 (the "Amending Regulations").
- A1.3 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Communications Act, which means that we will generally carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. In accordance with section 7 of the Communications Act, in producing this RIA, we have had regard to such general guidance as we consider appropriate including related Cabinet Office guidance. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment<sup>12</sup>.

## Background

- A1.4 In the UK, we are responsible for the authorising of civil use of the radio spectrum and achieve this by granting wireless telegraphy licences under the Wireless Telegraphy Act 2006 (the "WT Act") and by making Regulations exempting users of particular equipment from the requirement to hold such a licence. Under section 8(1) of the WT Act, it is an offence to install or use equipment to transmit without holding a licence granted by us, unless the use of such equipment is exempted. Section 8(3) enables Ofcom to make regulations exempting equipment from the requirement to hold a licence subject to specified terms, provisions and limitations and under Section 8(4) of the WT Act we must make regulations to exempt equipment if it is unlikely to cause undue interference.

## Proposal

- A1.5 The Wireless Telegraphy (Exemption) Regulations 2003 (the "Exemption Regulations") permit the use of analogue based PMR 446 equipment on a licence-exempt basis. On 23 November 2007 Ofcom consulted on a proposal to allow the use of digital PMR446 radio equipment by widening the scope of the Exemption Regulations through an amending statutory instrument<sup>13,14</sup>. Following that

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<sup>12</sup> Available at [http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf).

<sup>13</sup> Proposal to amend the Wireless Telegraphy Exemption Regulations 2003 available at [http://www.ofcom.org.uk/consult/condocs/wireless\\_exemption/wireless\\_exe.pdf](http://www.ofcom.org.uk/consult/condocs/wireless_exemption/wireless_exe.pdf)

<sup>14</sup> Ofcom first consulted on the policy options for allowing the use of digital PMR 446 in June 2006 and issued a final statement in November 2006 – see <http://www.ofcom.org.uk/consult/condocs/exemption/statement/statement.pdf>

consultation we have decided to make the Amending Regulations and this RIA relates to that decision.

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

A1.6 We take account of the impact of our decisions have 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 widening the exemption will be of benefit to consumers for the following reasons:

- The measures concern the use of radio equipment on a licence-exempt basis which reduces the regulatory and administrative burden on our stakeholders;
- Licence-exemption is proposed only in areas where use of equipment is unlikely to cause harmful interference to other spectrum use; and
- They support the introduction of new and innovative technologies, in this case digital versions of the PMR446 equipment, which will be of benefit to consumers in general.

### **Our policy objective**

A1.7 In accordance with the WT Act, we must exempt from licensing the use of specified equipment where it is not likely that such use will cause interference to other legitimate users of the radio spectrum or is contrary to an international obligation.

### **Options considered**

A1.8 The options open to us in relation to the management of radio spectrum equipment use generally fall into the following categories:

- Not to authorise use in the UK e.g. for national spectrum management reasons;
- To authorise use through the issue of a Wireless Telegraphy ("WT") licence; or
- To authorise use through exemption from the need to hold an individual WT licence.

### **Analysis of options**

#### **Allocation decision**

A1.9 In relation to digital PMR 446, the option not to authorise was discounted because, in the case of the exemption proposal, failure to authorise use in the UK would mean that we would be in breach of our statutory obligation to authorise radio spectrum use where such use is not deemed to cause interference. Failure to provide an authorisation regime in the area proposed for exemption would also stifle the development of innovative radio spectrum applications with the subsequent loss of benefits to UK citizens and the UK economy.

#### **Licence or Licence-exempt**

A1.10 The benefits and costs of authorising use through licence-exemption versus licensing are considered below.

### Costs to business

- A1.11 Licence-exemption represents the least cost regulatory approach to the authorisation of spectrum use. If use of spectrum is authorised through a WT licence, businesses will face a direct cost in terms of the cost of acquiring a licence. This could be equal to the businesses' own administrative costs associated with applying for the licence and compliance with the terms and conditions of that licence.
- A1.12 To enable comparison of a licence-exempt against a licensing regime, it is necessary to make assumptions about the licensing regime where this is adopted as the alternative to licence-exemption. We have based our assumption on the fact that the types of services which are typically made licence-exempt would, under a licensing regime, be issued with an "off the shelf licence". This type of licence generally requires no specific assignment coordination and attracts a relatively low fee of around £50 over a five year period.
- A1.13 If a licence was required for operating digital PMR446 radio equipment then it is likely that businesses would need to make multiple applications, one for each radio or site depending on the licensing regime. This would impose administration and management costs to business.
- A1.14 Clearly, this burden will be avoided if use of spectrum is made exempt from licensing. In estimating the costs associated with applying for a licence we have assumed the same cost as indicated above in terms of the cost to us of processing a licence application.
- A1.15 One cost to business that is not included as a benefit of the licence-exempt regime is the direct cost of any licence application fee. This is because we seek to identify below the benefits associated with reduced administrative costs to us. If we also included savings to business in not having to pay our admin fees then this would double count the benefit. Nevertheless, the licence fee may be relevant for the assessment of service take-up if it represents a large proportion of the overall value of the service in question

### Costs to Ofcom

- A1.16 There are one-off administrative costs associated with making a statutory instrument. We consider the implementation costs to be low and more than offset by the benefits of licence-exemption. There may be a slight reduction in spectrum management costs in certain areas. Licence-exemption would reduce the cost incurred by us in operating a licensing regime. Operating a licence regime would include issuing licences, collecting licence fees and enforcing terms and conditions of licences.

### Costs to consumers

- A1.17 The costs to consumers of licensing versus exemption would mainly arise from the potential disincentive effects on the take up of services and hence a loss of the consumer surplus that licensing costs may impose.

## Evaluation

- A1.18 We do not intend to actively monitor this area however we may review the regulations as they apply to digital PMR 446 equipment if there is cause for concern to other spectrum users.

## Conclusion

- A1.19 Licensing may still be appropriate if there was a risk of undue interference. However we have looked at the technical characteristics of digital PMR 446 equipment and the risk of harmful interference to other licensees is low.
- A1.20 Licence-exemption is therefore the preferred option to authorise the use of digital PMR 446 equipment in the UK. The analysis of this equipment shows that there is minimal risk of interference to other users of the radio spectrum; this approach is in line with our regulatory duties and also meets the demands of EC requirements providing the following benefits:
- Reduction of the regulatory burden; and
  - Introduction of innovative applications and new technologies.