



# Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) (Amendment) Regulations 2007

Statement

Publication date:

2 May 2007



# Contents

Section		Page
1	Summary	1
2	Introduction	2
3	Scope of the Regulations	3
Annex		Page
1	Regulatory Impact Assessment	4

## Section 1

# Summary

- 1.1 This statement confirms that, following a formal consultation process, the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) Regulations 2005<sup>1</sup> (the “2005 Regulations”) have been amended. Ofcom was required to make changes to the 2005 Regulations in order to comply with a European Commission Decision<sup>2</sup> (the “Decision”) whose implementation is mandatory for all European Union (“EU”) Member States by 23 May 2007.
- 1.2 To implement the required changes, Ofcom has made a new Statutory Instrument, the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) (Amendment) Regulations 2007 (the “Amendment Regulations”). Ofcom consulted on the Amendment Regulations in a Notice<sup>3</sup> published on 6 March 2007. The consultation closed on 10 April 2007; Ofcom received no responses.
- 1.3 The Amendment Regulations enter into force on 14 May 2007 and remove the technical restrictions relating to the operation of a Listen Before Talk (“LBT”) polite protocol, the duration of signals and the shape of signal beams. The European Commission considered, and Member States agreed, that it was not necessary to mandate these restrictions through the Decision since the use of radio frequency identification (“RFID”) devices must comply with the essential requirements of the Radio and Telecommunications Terminal Equipment (“R&TTE”) Directive to ensure protection of other spectrum users. This compliance can be achieved through the use of relevant Harmonised Standards (EN 302 208) or by using the same level of protection as the Harmonised Standard.

## Regulatory Impact Assessment

- 1.4 The Regulatory Impact Assessment (“RIA”) conducted in relation to Ofcom's amendment proposals, in the form published in both Houses of Parliament, can be found in Annex 1 to this statement.

---

<sup>1</sup> Available at [http://www.opsi.gov.uk/si/si2005/uksi\\_20053471\\_en.pdf](http://www.opsi.gov.uk/si/si2005/uksi_20053471_en.pdf).

<sup>2</sup> Commission Decision of 23 November 2006 on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band (2006/804/EC).

<sup>3</sup> Available at <http://www.ofcom.org.uk/consult/condocs/rfid/>.

## Section 2

# Introduction

- 2.1 Ofcom made the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) Regulations 2005 (the “2005 Regulations”) in order to permit the use of radio frequency identification (“RFID”) equipment on a licence-exempt basis in line with a European Conference of Postal and Telecommunications Administrations (“CEPT”) Recommendation<sup>4</sup> (the “CEPT Recommendation”).
- 2.2 Since 2005, the European Commission has developed a Decision<sup>5</sup> (the “Decision”). The Decision is fundamentally in line with the CEPT Recommendation and mandates that all EU Member States authorise the use of RFID equipment on a licence-exempt basis by 23 May 2007. However, the Decision removes some technical restrictions contained in the 2005 Regulations such as the operation of a Listen Before Talk (“LBT”) polite protocol, the duration of signals and the shape of signal beams.
- 2.3 To implement the required changes, Ofcom has made a new Statutory Instrument, the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) (Amendment) Regulations 2007 (the “Amendment Regulations”). The Amendment Regulations enter into force on 14 May 2007.
- 2.4 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.
- 2.5 In order to implement the Decision, and in accordance with Ofcom’s statutory obligations, a draft of the Amendment Regulations was published and subject to a one-month consultation period. Ofcom consulted on the amendments to the 2005 Regulations between 6 March and 10 April 2007 in the document “Proposal to make the Radio Frequency Identification Equipment (Exemption) (Amendment) Regulations 2007”, available on the Ofcom website<sup>6</sup>.
- 2.6 Ofcom received no comments on the draft Amendment Regulations. Consequently, Ofcom has not revised its proposal and will implement these in full.
- 2.7 This statement confirms that Ofcom has amended the 2005 Regulations.

---

<sup>4</sup> CEPT/ERC/Rec 70-03 Relating to the use of Short Range Devices (SRD).

<sup>5</sup> Commission Decision of 23 November 2006 on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band (2006/804/EC).

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

## Section 3

# Scope of the Regulations

## Responses to the Notice

3.1 Ofcom received no responses to the Notice.

## Final scope of the Regulations

3.2 The Amendment Regulations remain unchanged in relation to the removal of technical restrictions relating to the operation of an LBT polite protocol, the duration of signals and the shape of signal beams. Ofcom still retains restrictions on frequency band, channel bandwidth and maximum permissible power.

3.3 The Amendment Regulations remove the following requirements applicable to interrogator equipment:

- only transmits with a certain beam width;
- only begins transmitting at the effective radiated power levels stated where the signal level at the receiver of the interrogator is at the levels stipulated;
- operates so that the duration of each transmission from an interrogator is longer than four seconds; and
- operates with an interval between each transmission from the interrogator using the same channel of not less than 100 milliseconds (regulation 4(2)).

3.4 Paragraph 3 of regulation 2 of the Amendment Regulations updates the references made to the WT Act 1949 so that they refer to the WT Act 2006.

## 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. The analysis presented in this document represents an RIA as defined in section 7 of the Communications Act 2003 (the "2003 Act") for amending the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) Regulations 2005 (the "2005 Regulations").
- 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. This is reflected in section 7 of the 2003 Act, which means that generally Ofcom will 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 Ofcom's activities. However, as a matter of policy, Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. In accordance with section 7 of the 2003 Act, in producing this RIA, Ofcom has had regard to such general guidance as it considers appropriate, including related to Cabinet Office guidance. For further information about Ofcom's 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 In the UK, Ofcom is responsible for the authorisation of civil use of the radio spectrum and achieves this by granting wireless-telegraphy ("WT") licences under the Wireless Telegraphy Act 2006 (the "2006 Act") and by making Regulations exempting users of particular equipment from the requirement to hold such a licence. Under section 8(1) of the 2006 Act, it is an offence to install or use equipment to transmit without holding a licence granted by Ofcom unless the use of such equipment is exempted.
- A1.4 Ofcom made the 2005 Regulations to facilitate access to the 865-868 MHz band for the use of radio frequency identification ("RFID") equipment on a licence-exempt basis. This was in response to significant stakeholder demand. The basic technical parameters on which the 2005 Regulations were based have now been incorporated into a European Commission Decision<sup>7</sup> (the "Decision"), which mandates implementation by all European Union ("EU") Member States by 23 May 2007. Some technical restrictions contained in the 2005 Regulations are not included in the Decision. As a consequence, in order to comply with the Decision, Ofcom must amend the 2005 Regulations to remove these restrictions and intends to do this through making a new statutory instrument, the Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) (Amendment) Regulations

---

<sup>7</sup> Commission Decision of 23 November 2006 on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band (2006/804/EC), OJ No L 329, 25.11.06, p 64.

2007 (the “Proposed Amendment Regulations”). Ofcom consulted on this proposal in a notice published on 6 March 2007<sup>8</sup>.

## Proposal

A1.5 This RIA relates to the proposal to update the 2005 Regulations in order to comply with the Decision. The nature of the changes required and affected by the Proposed Amendment Regulations are as follows:

- removal of all technical restrictions except frequency band, channel bandwidth and maximum permissible power; and
- editorial updates.

## The citizen and/or consumer interest

A1.6 Ofcom takes account of the impact of its decisions upon both citizen and consumer interests in the markets it regulates. When the 2005 Regulations were proposed, the impact of the decision to authorise the use of RFID equipment in the 865-868 MHz band on a licence-exempt basis was considered in the consultation conducted at that time.<sup>9</sup> This consultation examined both the benefits of RFID technology and the wider impact of such issues as privacy concerns.

A1.7 In this instance, the Proposed Amendment Regulations represent no material change to the already established operation of RFID equipment in the 865-868 MHz band and thus no additional impact upon citizen and consumers or further costs to business.

## Ofcom’s policy objective

A1.8 Ofcom seeks wherever possible to reduce the regulatory burden on its stakeholders and has supported the development of the Decision to provide a formal basis for the harmonised use of RFID equipment across the EU in the 865-868 MHz band on a licence-exempt basis. The Decision establishes a formal regulatory framework in which to promote the benefits of the use of RFID technology.

A1.9 As an EU Member State, the UK is bound by the terms of the Decision and the requirement to implement them by 23 May 2007.

## Options considered

A1.10 The options open to Ofcom in relation to the implementation of the Decision are as follows:

- to amend the 2005 Regulations to make them fully compliant; or
- to do nothing.

---

<sup>8</sup> Notice of Ofcom’s proposal to make the Radio Frequency Identification Equipment (Exemption) (Amendment) Regulations 2007, available at <http://www.ofcom.org.uk/consult/condocs/rfid/rfid.pdf>.

<sup>9</sup> Notice of Ofcom’s proposal to exempt the use of radio frequency identification equipment in the 865-868 MHz band from Wireless Telegraphy licensing. See [http://www.ofcom.org.uk/consult/condocs/wireless865\\_868/](http://www.ofcom.org.uk/consult/condocs/wireless865_868/).



## **Analysis of the different options**

### **Amend the 2005 Regulations**

- A1.11 The 2005 Regulations already encompass the requirements of the Decision but impose additional technical restrictions that are no longer mandated through the regulatory framework. The most efficient route to mandatory compliance therefore is to remove these restrictions.

### **Do nothing**

- A1.12 By doing nothing and leaving the 2005 Regulations unchanged, Ofcom would be in breach of the Decision and could be open to infraction proceedings initiated by the European Commission. The Decision allows for Member States to be less restrictive in implementation but not more restrictive. Left unchanged, the 2005 Regulations would impose restrictions that do not feature in the Decision.

## **Conclusion on the preferred option**

- A1.13 The preferred option therefore is to make the Proposed Amendment Regulations as indicated in order to comply with the Decision. The benefits of this option are the removal of technical restrictions from the 2005 Regulations and thus compliance with EU law.