



Notice of Ofcom's proposal to  
make regulations to inspect and  
restrict the use of certain Wireless  
Telegraphy licence exempt  
apparatus

**Consultation**

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## Section 1

# Introduction

- 1.1 Ofcom has power to make statutory instruments (regulations) under section 1(1) of the Wireless Telegraphy Act 1949 (WT Act) which exempt users of the equipment specified from the need to hold a wireless telegraphy licence.
- 1.2 Most of the equipment which is currently exempt from licensing is specified in the Wireless Telegraphy (Exemption) Regulations 2003 (S.I. 2003/74) ("The 2003 Regulations"). In due course Ofcom wishes to amend the 2003 Regulations to make changes and additions to the type of equipment that is exempt from licensing.
- 1.3 However, before Ofcom can do so, it has become necessary for Ofcom to make a structural amendment to the 2003 Regulations by statutory instrument. Once that amendment is made Ofcom will consult on further changes.

## What is the structural amendment which is being proposed?

- 1.4 The structural amendment concerns regulation 6 of the 2003 Regulations (available at <http://www.opsi.gov.uk/si/si2003/20030074.htm>).
- 1.5 Regulation 6 permits a person authorised by Ofcom who has reasonable cause to believe that exempt apparatus is not complying with the terms of the exemption to demand that any person who is in possession or control of the relevant apparatus to:
  - (a) permit and facilitate its inspection by that authorised person; and
  - (b) cause its use to -
    - (i) cease; or
    - (ii) be restricted in the manner specified by that authorised person, for a period of time ending either on a date or on the occurrence of an event specified in either case by that authorised person.
- 1.6 Ofcom proposes to make a statutory instrument which revokes regulation 6 of the 2003 Regulations and re-enacts its provisions in a new statutory instrument.

## Why is the structural amendment necessary?

- 1.7 The structural amendment is necessary because, as the 2003 Regulations stand at present, to make amendments to the types of equipment that are included in the 2003 Regulations Ofcom would have to rely on powers under both section 1 and section 3 of the WT Act.
- 1.8 By virtue of changes made to the exercise of these powers by the Communications Act 2003, Ofcom (unlike its predecessor the Radiocommunications Agency) can not rely on both of these enabling powers in the same statutory instrument.
- 1.9 The reason for that is that, when making regulations under section 1 no Parliamentary approval of the regulations is required. But when making regulations under section 3 the consent of the Secretary of State is required and the regulations are subject to annulment by a resolution in Parliament (known as "negative procedure"). Under that

negative procedure an instrument will remain in force unless a Member of Parliament introduces a resolution within the required time period.

- 1.10 Ofcom has consulted the Clerks to Parliament's Joint Committee on Statutory Instruments. The Clerks have advised that "negative procedure" and "no procedure" material should not be combined in one statutory instrument. That might create procedural difficulties if a resolution were tabled against the instrument.
- 1.11 In order to avoid making a statutory instrument which would be subject to two different types of Parliamentary scrutiny, Ofcom has therefore decided to make two separate instruments.
- 1.12 The first one will revoke regulation 6 of the 2003 Regulations (which relies on section 3 of the WT Act for its vires) and re-enacts the provisions in a separate instrument.
- 1.13 Once that amendment is made Ofcom will consult on further changes to the substance of the 2003 Regulations which will be made in a second statutory instrument.

### The Proposed Regulations

- 1.14 Ofcom therefore proposes to make the Wireless Telegraphy (Inspection and Restrictions on Use of Exempt Apparatus) Regulations 2005 (the "Proposed Regulations"). The Proposed Regulations will revoke section 6 of the 2003 Exemption Regulations and re-enact that provision in its own freestanding statutory instrument.
- 1.15 If, in future, further amendment to the scope of the power to inspect or restrict use is required, then amendment will be made to the Proposed Regulations and such amending legislation will be subject to negative procedure.
- 1.16 The purpose of this consultation is to consult on the draft of the Proposed Regulations. A draft of the Proposed Regulations is set out at annex 3.
- 1.17 This consultation is a requirement under section 403 of the Communications Act 2003.
- 1.18 No substantive changes to Ofcom's existing powers or to the rights and obligations of users of exempt equipment are created by this structural amendment. So there should be no practical effects arising from the enactment of the Proposed Regulations.

### Next Steps

- 1.19 Comments on the issues addressed in this consultation should be delivered to Ofcom by **26 August 2005**. After considering any representations made Ofcom will issue a statement and proceed with the implementation of the proposed regulations.

## Section 2

# Regulatory Impact Assessment

- 2.1 The analysis presented in this section of this document, when read in conjunction with the rest of this document, represents Ofcom's Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003.
- 2.2 RIAs form part of best practice policy-making and are commonly used by other regulators. Ofcom carries out RIAs 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 Ofcom's activities.
- 2.3 The purpose of the Regulation is to revoke regulation 6 of the Wireless Telegraphy (Exemptions) Regulations 2003 (the "2003 regulations", which are a type of Statutory Instrument (SI)) and replace the obligation contained in that regulation with a similar provision which is contained in regulation 4 of these Regulations. The power to inspect or restrict use of exempt equipment will then be contained in separate legislation from the exemptions themselves. That will enable Ofcom to make changes to the scope of existing exemptions. This will remove potential procedural difficulties with enactment of the regulations (explained below).

## Costs and benefits

**Option 1:** *Revoke Regulation 6 of the 2003 Regulations and re-enact a similar provision in a separate SI (i.e. provide for decoupling of the regulatory process for new exemptions and the enforcement of regulations)*

- 2.4 Ofcom currently has a duty to exempt wireless telegraphy equipment unless it is likely to cause interference to other users (section 1(1) of the WT Act). Ofcom also has powers to inspect equipment to ensure compliance with the regulations (section 3(1) of the WT Act).
- 2.5 The proposal will provide for the decoupling of the SIs for a) new exemptions and b) the powers to enforce compliance with the regulations (i.e. a separate SI undertaken in respect of each)).
- 2.6 The main benefit of the proposal is the avoidance of Parliamentary procedural difficulties that may arise when exempting new wireless telegraphy equipment and taking on powers to enforce regulations under the current WT Act.
- 2.7 Specifically, procedural difficulties may arise since section 1(1) of the Act (exempting equipment) requires no Parliamentary approval, whereas section 3(1) of the Act (powers to inspect and enforce compliance) requires consent of the Secretary of State (SOS) and are subject to annulment by resolution in Parliament known as a "negative procedure". It would not be possible to follow both section 1(1) and 3(1) procedure in one SI each time Ofcom updates the exemption regulations.
- 2.8 The Joint Committee on Statutory Instruments has advised Ofcom not to include negative procedure material and "no procedure" material in the same statutory instrument.
- 2.9 Under the proposal, Ofcom will therefore make two separate SIs. One (exempting equipment) would not be subject to Parliamentary approval, while the other (inspection

and enforcement) would be subject to a negative procedure. This process would significantly reduce the prospect of procedural difficulties, although would not eliminate them completely (it is still possible that the SI to introduce powers to inspect a new class of exempt equipment is contested through a negative procedure).

2.10 The significance of reducing procedural difficulties is that it will increase the flexibility and responsiveness of Ofcom in discharging its duty to exempt equipment and to minimise interference. For instance:

- Licence exemptions are beneficial to users of equipment which does not cause interference. The exemption removes the requirement for the user to obtain a licence to operate that device, thereby reducing costs of compliance for the user and reducing enforcement costs for the regulator. Costs of licence exemptions include the direct costs of assessing possible exemptions and the direct administrative costs of drafting an amendment to allow for new exemptions.
- For instance, users of digital cordless (DECT) phones that utilise spectrum are exempt from requiring a licence. Last year several million DECT phones were sold, which would, in the absence of exemptions, imply high compliance and enforcement costs for consumers and the regulator.
- Inspections and general enforcement of the regulations are also improved, since non-compliant devices that could cause harmful interference to other legitimate users of exempt equipment that utilise the same bandwidth (or contiguous bandwidths) of spectrum can be identified. Powers to inspect equipment and require users to cease or restrict the use of their equipment provide incentives for users of non-complaint equipment to internalise costs that would otherwise be externalised (i.e. through interference). These costs would be borne by legitimate users of the spectrum, through the powers of inspection and cessation or restriction of the use of the device. Costs of inspection and enforcement include the direct costs of operating a field force that can identify and remedy instances where non-complaint devices are causing harmful interference.

2.11 It is difficult to quantify the benefits of facilitating the decoupling of the processes by which exemptions are made and enforcement regulated for. Qualitatively, the proposal to decouple and minimise procedural risk is likely to have material benefits. The ability of Ofcom to respond to market developments could be important in reducing costs of regulation on markets which are dependent of the exemption process and enforcement regime. Equally, these benefits should not be overstated, as the procedural difficulties are to some extent present (albeit to a lesser degree) in this proposal.

2.12 The costs of the proposal relate primarily to the direct one-off administrative cost of revoking regulation 6 and re-enacting the provision in a separate Statutory Instrument which is not a material cost.

2.13 The benefits of the proposal are therefore likely to outweigh the one-off cost of amending the regulations. The proposal is ultimately intended to ensure regulations can respond quickly and effectively to making exemptions and minimising harmful interference through inspections and enforcement. Ofcom considers that the proposal is therefore justified.

### ***Option 2: Not make the proposed Regulations***

2.14 The impact of not making the regulations would be that the existing exemption regulations would continue in force without being updated to reflect developments. That is because Ofcom cannot update the exemptions covered without first revoking

regulation 6 and re-enacting it in a separate statutory instrument. This means that Ofcom would not be able to change the content of the current regulations which are becoming increasingly outdated.

## **Conclusion**

2.15 For the reasons identified in paragraphs 2.4 -2.14 above, Ofcom considers the benefits of making the 2003 Regulations outweigh the costs. Ofcom recommends that the proposal to revoke Regulation 6 and re-enact an identical provision in a separate SI be made.

## Section 3

# Responding to this consultation

## How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 26th August 2005**.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to [Diana.Kennedy@ofcom.org.uk](mailto:Diana.Kennedy@ofcom.org.uk).

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Diana Kennedy  
Spectrum Markets Team  
4th Floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7783 4201

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Diana Kennedy on 020 7783 4201.

## Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk). We will do this on receipt of responses, unless respondents request otherwise on their response cover sheet.

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts



of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

## Next steps

Following the end of the consultation period, Ofcom intends to publish a brief statement and subject to representations, finalise, make and publish The proposed Regulations to take effect around the end of September 2005.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

This consultation is shorter than Ofcom's standard 10 week period because the legal procedure for consulting on legal changes stipulates a minimum of one month and one day notice period. Ofcom believes that 5 weeks is sufficient because of the minimum impact of these regulations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Tony Stoller, External Relations Director, External Relations, who is Ofcom's consultation champion:

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Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3550  
Fax: 020 7981 3333  
E-mail: [Tony.Stoller@ofcom.org.uk](mailto:Tony.Stoller@ofcom.org.uk)

## **Annex 1**

# **Ofcom's consultation principles**

Ofcom has published the following seven principles that it will follow for each public written consultation:

### **Before the consultation**

- A1.1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### **During the consultation**

- A1.2 We will be clear about who we are consulting, why, on what questions and for how long.
- A1.3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A1.4 We will normally allow ten weeks for responses to consultations on issues of general interest.
- A1.5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- A1.6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### **After the consultation**

- A1.7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 2

# Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)