



Decision to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2012

Statement

Publication date:

13 April 2012

Contents

| Section | | Page |
|---------|----------------------|------|
| 1 | Summary | 1 |
| 2 | Background | 3 |
| 3 | Scope of Regulations | 5 |
| Annex | | Page |
| 1 | Respondents | 11 |
| 2 | Glossary | 12 |

Section 1

Summary

- 1.1 This statement presents our decision to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2012 (the 'Regulations'). It addresses the issues raised by stakeholders in response to our Statutory Notice entitled "Notice of proposals to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2012"¹ (the 'Notice'), which we published in January 2012, and explains that we have decided to make the Regulations as proposed, with some minor changes.
- 1.2 The Regulations set out the licence charges (fees) for classes of wireless telegraphy licences issued by Ofcom under the Wireless Telegraphy Act 2006 (the 'WT Act'), other than those awarded by auction. They will come into force on 3 May 2012. Further copies of the Regulations can be obtained through the National Archives².
- 1.3 In particular, the Regulations amend the Wireless Telegraphy (Licence Charges) Regulations 2011 (the "2011 Regulations") to make changes to fees for certain aeronautical licence classes that implement Ofcom's decision to introduce 'Administered Incentive Pricing' (AIP) to the aeronautical sector. Under AIP, annual licence fees are set at a level that reflects a range of spectrum management objectives. Additionally, the Regulations amend the 2011 Regulations as follows (unless stated in the list below, the fees for other licence classes remained unchanged):
 - introduce the fees payable for a number of new aeronautical licence classes (please note that these licences will not be issued in relation to stations in Jersey, Guernsey and Isle of Man);
 - implement the second tier of a phased AIP increase for Coastal Station Radio (UK) and Coastal Station Radio (International) licence classes;
 - extend the fee payment interval for an Aircraft licence from one to three years; and
 - reduce the fee for Analogue television broadcasting licences in line with digital switch over (DSO).
- 1.4 All the changes reflect Ofcom policy decisions made following earlier consultations, in accordance with our consultation principles.
- 1.5 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the WT Act, we published the Notice setting out our proposal to make them. The Notice also contained a draft of the Regulations (the 'Proposed Regulations') and invited comments from stakeholders on whether the Proposed Regulations properly gave effect to the policy decisions on relevant licence fees that Ofcom had previously made.

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/licence-charges-2012/summary/2012_Fee_Notice.pdf

² A link to the online version can be found at <http://www.legislation.gov.uk/>

- 1.6 We received seven non-confidential responses to the Notice. In accordance with section 122(4)(c) of the WT Act, we have considered these responses. After doing so, and for the reasons set out in this document, we have decided to adopt the Regulations as proposed (subject to some amendments, the details of which can be found in section 3).

Section 2

Background

Introduction

- 2.1 The WT Act gives Ofcom the power to set fees. Section 13 of that Act permits us in prescribing those fees to use AIP (whereby annual licence fees are set above administrative costs to reflect a range of spectrum management objectives)³. This power goes to discharging a range of duties under section 3 of the WT Act which require us to efficiently manage the radio spectrum (as well as our duty under section 3 of the Communications Act 2003 (the '2003 Act') to secure optimal use of the spectrum).
- 2.2 In order to change the fees prescribed by existing regulations, we must either make a new set of regulations or amend the existing ones. We have decided to do the latter.

Statutory Notice

- 2.3 Under section 122(4) to (6) of the WT Act, we are required to publish a notice of any proposal to make regulations. The notice must state that Ofcom proposes to make the regulations in question, must set out their general effect, say where a copy may be obtained and give any person or party an opportunity to make representations about them.
- 2.4 We published the Notice, meeting the statutory requirements, on 26 January 2012. The Notice included a copy of the Proposed Regulations. The Notice gave any person or party who wished to do so until 28 February 2012 to make representations.
- 2.5 The Proposed Regulations put forward the following changes to WT Act licence fees:
- the introduction of fees for the following new licence classes:
 - Aeronautical Station (Air/Ground, Aerodrome Flight Information Service and Tower);
 - Aeronautical Station (Approach);
 - Aeronautical Station (Aeronautical Broadcast);
 - Aeronautical Station (Aircraft Communications Addressing and Reporting System);
 - Aeronautical Station (Very High Frequency Data Link);
 - Aeronautical Station (Area Control);
 - Aeronautical Station (Aerodrome Surface and Operational Control);
 - Aeronautical Station (Offshore); and

³ Section 13(2) says, "OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions."

- Aeronautical Station (Recreational Aviation).
- amendment of the current charges for the following licence classes:
 - Coastal Station Radio (UK);
 - Coastal Station Radio (International);
 - Aeronautical Ground Station (Fire), which will be renamed “Aeronautical Station (Fire and Emergency)”;
 - Aircraft (including Aircraft Transportable); and
 - Analogue television broadcasting.

2.6 We received seven responses to the Notice and these are detailed in the next section of this document.

Section 3

Scope of Regulations

Introduction

- 3.1 This section outlines the comments that we received to the Notice and our response to these. We received 7 non-confidential responses. The responses are published in full on our website⁴. Following consideration of the responses as outlined below, we have decided to proceed with our proposal to make the Regulations. We did not consider that any of the responses provide a basis for amending the Proposed Regulations, and we have decided to adopt them (subject to some amendments, the details of which are explained below).

Stakeholders' responses to the Notice

- 3.2 Most of the respondents were unhappy with Ofcom's policy decision to introduce AIP-based fees to aeronautical licence classes. The General Aviation Alliance commented that the introduction of AIP to the aeronautical spectrum would impact on air safety and public safety and that the introduction of an artificial market will not improve spectrum efficiency. This view was echoed by Trevor Harris and another respondent who requested confidentiality. The General Aviation Alliance advised that they set this out in their response to the previous consultation. They argued that Ofcom did not address in a meaningful way the issues that they raised but decided to proceed with the implementation of the policy proposals.
- 3.3 BAE Systems Marine LTD advised that they are allocated a frequency and a designated operational coverage (DOC) and have no choice regarding the use of 8.33 KHz spacing or 25 KHz spacing. They asked why they should be penalised for something outside of their control. They commented that, being a small General Aviation aerodrome, it is not mandatory for light aircraft in Class G airspace to carry a radio with 8.33 KHz spacing. According to BAE Systems Marine LTD, if to save money, they had a frequency allocated with an 8.33 kHz spacing, they would effectively exclude all other aircraft that operate on 25 kHz which would reduce their revenue. It would also increase the number of aircraft in their vicinity who are unable to communicate with the aerodrome.
- 3.4 Thames Valley Microlight club asked how can one single sheet of A4 paper cost up to £3300 to issue each year. This club added that, as they are run as a 'not for profit' club, under the current proposal and even using the lower fee, they would find it financially prohibitive to continue with dedicated Air/Ground radio after 2014. Next to land rental, this would equate to their second biggest expense. Based on their 2011 airfield log and on the lower DOC limit, they estimate that they would have to increase the landing fee by £2.82 and for the higher DOC by £16.42. They advised that Ofcom had completely overlooked or not considered the many small airfield/farm strips in the UK that operate on a non profit/club basis, operating Air/Ground radio as a basic safety instrument.
- 3.5 Another respondent, NATS, raised a number of issues relating to the Notice and the implementation of the Proposed Regulations, including its impact on the licensing process. Their comments were as follows.

⁴ <http://stakeholders.ofcom.org.uk/consultations/licence-charges-2012/?showResponses=true>

- 3.6 NATS raised concerns over the administrative arrangements that Ofcom would undertake in amending the regulations annually to implement the phased in fee changes. They advised that these must take effect in the same month otherwise some licensees could be charged differently. They suggested that there may be a need for transitional arrangements to be put in place in order to clarify the process when adding a new station to an existing assignment. They questioned whether a new station added to an existing licence would be charged at the new rate or the existing rate. In addition they highlighted that it would have been helpful to have seen template licences.
- 3.7 According to NATS, Section 3.42 of the Notice advised that the term “liberalised” was used in relation to the new aeronautical licence classes. In NATS’ view, this term implies that the new licences would be less restrictive than the current licence classes and could permit the service to transfer from one type of use to another. NATS argued that if the licences were to be liberalised, this goes beyond the matters raised in the consultation.
- 3.8 They also advised that in Table 1 there were no fee caps for the Aeronautical Station (Area Control) and for DOC’s up to 10nm/3000ft as was described in paragraph 4.19 of the June 2011 Statement.
- 3.9 In relation to the removal of the Aeronautical Ground Station (Fire) licence from the 2011 Regulations, NATS stated that it was not clear how the licence could be removed from the regulations but still be issued. They advised that in order to legally use the 121.6 MHz frequencies, a licence is needed.
- 3.10 NATS proposed that the presentation of the formula in Schedule 15 could be improved. In particular, they suggested that perhaps the “RR/SA” parameter could be defined separately, e.g. Reference Rate per square nautical mile, leaving the formulae more clearly representing a fee per area multiplied by a $\text{Pi} \times r^2$ calculated area
- 3.11 They also raised an issue concerning paragraph 3.15 of the Notice, which concerns the rounding down of fees to the nearest £50 to minimise administrative complexity. NATS commented that for all but the very smallest DOCs, this rounding down would result in a complex fee, especially for those licences operated on 8.33 kHz channel spacing.
- 3.12 Finally, NATS commented that reference is made in paragraph 3.45 of the Notice that DOC details may appear on the licences and the radius or area are quoted as possible examples as parameters that may appear. NATS was concerned at this stage that sets of coordinates for the boundaries of area DOCs might still be duplicated on the licence documents as well as appearing on the CAA assignment letter, as was referred to in the NATS comments dated 21st April 2011 on the bespoke fees consultation.

Ofcom’s responses to stakeholders’ comments

- 3.13 In response to the point made by many of the respondents concerning the policy of applying AIP to the aeronautical sector, our consideration is as follows.

First, much of the responses to the Notice above is concerned with the underlying policy of applying AIP to certain classes of aeronautical licence. This is a matter on which Ofcom has previously consulted, considered evidence and consultation responses, and made decisions (in particular, we did so as set out in the June 2011

statement). We are not making that policy decision now and, as we set out in the Notice, we were not consulting on, "... the underlying policy decisions we have already made." What Ofcom was consulting on, and is now deciding on, is whether the proposed changes to the 2011 Regulations (including the formulae to calculate the new AIP-based fees) would properly give effect to the policy decisions we previously made. A couple of respondents did comment that the proposed regulations do in fact implement the policy proposals correctly although they feel that the policy itself was flawed.

- 3.14 In response to the comments we received from NATS on the way we proposed to implement Ofcom's policy decision, we would like to make the following comments.
- 3.15 We would normally expect to implement the amendments to the 2011 Regulations on the same date each year. The Regulations will come into force on 3 May 2102. This is the same date as tiered AIP fees for the maritime sector were introduced in 2011.
- 3.16 Concerning the issue of what fee a licensee would be charged for any amendments to the licence (adding/ removing a station or changing the DOC area), licensees will continue to be charged at the old rate until their licence comes up for renewal. Given that the old licence was paid for on a cost-recovery basis, under these specific circumstances we consider it appropriate to start charging the new higher AIP rate when the licence is due for renewal. At the renewal date the licensee will be charged the new rate for all stations.
- 3.17 Although we appreciate the suggestion by NATS for the Notice to contain a copy of the licence templates, this consultation dealt solely with the changes to the fee regulations. However, the new licence templates have been published on the section of the CAA website that relates to radio licensing. As explained in paragraph 3.44 of the Notice, we will consult stakeholders on the proposed variations to their licences in due course.
- 3.18 In regard to the use of the term "liberalised" in paragraph 3.42 of the Notice, this was an editorial error. As NATS correctly stated, the new licences are a rearrangement of the existing licence types. These will be subject to the same restrictions and technical parameters as current licence types. We apologise for any confusion that this may have caused.
- 3.19 NATS noted that the maximum fee cap for the Aeronautical Station (Area Control) licence class was not mentioned specifically in the table in paragraph 4.19 of the June 2011 statement. However, that document does state that the caps will be as set out in the December 2010 statement. As NATS identified, the Proposed Regulations do implement these caps in the amendment to Schedule 2. The inclusion of small DOCs in Table 1 of the June 2011 statement was to illustrate that the formulae would not see everyone paying £9,900/25 kHz. So, it was for illustrative purposes only. If you take the formula in the Regulations and calculate a service with a small DOC through it, you will get the results given in this illustrative table.
- 3.20 The Aeronautical Ground Station (Fire) licence is to be renamed "Aeronautical Station (Fire and Emergency)". As we stated in paragraph 3.39 of the Notice, this licence class will no longer attract a fee. For this reason, in the Notice we proposed that we would remove that specific licence class from the 2011 Regulations for charging purposes. However, we inadvertently omitted to insert this change in the Proposed Regulations. Therefore, we have decided to correct this error as outlined below in section 3.26. For the avoidance of doubt, the removal of this licence class from the 2011 Regulations does not mean that we are no longer issuing Aeronautical

Station (Fire and Emergency) licences. These will continue to be issued as required by the WT Act, but they will no longer attract any fee.

- 3.21 We appreciate NATS' suggestion to alter the way in which the fee formulae are described but we have decided not to change it. We recognise that using the reference rate relating to the surface area of the UK, instead of the "reference rate per square mile" suggested by NATS, would mean that licensees would need to complete an additional step to calculate their fees. However, we consider that the use of the former adds transparency to the fee calculation because it ensures that licensees are aware of how the fee is derived. In addition, this is in line with other licence classes in the 2011 Regulations.
- 3.22 The proposals relating to the rounding down of fees to reduce administrative complexity was outlined in paragraph 4.18 of the June 2011 statement. Once the fee calculation has been completed, the final amount will be rounded down to the nearest £50. This rounding will apply to all frequency bandwidths.
- 3.23 We proposed to include the DOC or lat/long coordinates of an area in the Wireless Telegraphy licence for the purposes of fee calculation. While these technical specifications are derived from the same data that populates the assignment document issued by the CAA, they will be set out in a separate document (i.e. the licence granted by Ofcom). We believe that reproducing the information in the licences would help the licensees work out how much they are required to pay for their licence since the licence will provide them with sufficient information to determine their fee by referring only to the 2011 Regulations, as amended, without reference to any further document.

Channel Islands and Isle of Man

- 3.24 The Regulations reflect the decision by the authorities in Jersey, Guernsey and Isle of Man for AIP not to apply to stations on the islands. Stations operating in these jurisdictions will continue to be issued with the existing licence classes, which will be retained in the 2011 Regulations and charged on a cost recovery basis.

Amendments to Regulations

- 3.25 Notwithstanding our decision to make the Regulations, since we published the Proposed Regulations we have made some amendments which are reflected in the Regulations. These do not affect the licence fee changes that we proposed to make in the Notice.
- 3.26 We have simplified the definitions of an area, aeronautical broadcast and circular service. The definition of a designated operational coverage has also been amended for this reason.
- 3.27 For Aeronautical Station licences the Proposed Regulations set out the charges based on a 8.33 kHz channel (the smallest bandwidth allocation available), in line with the fees set out in the 2011 Regulations for other licence classes. However, when finalising the Regulations we considered it appropriate to specify also the method for calculating the AIP-based bespoke fee for a 25 kHz channel (or 50 kHz in the case of a Very High Frequency Data Link licence). This was in order to clarify to stakeholders how to calculate their licence fee especially when applying the maximum fee cap and rounding down to the nearest multiple of £50.

- 3.28 For AIP-based bespoke fees the cap for a 8.33 kHz channel set out in the Proposed Regulations was £333.33 in most cases and £116.66 in one case. This represented 1/3 of the maximum cap that would apply to a corresponding 25 kHz channel (i.e. £1,000 and £350 respectively). In paragraph 4.18 of the June 2011 statement we advised that to reduce administrative complexity surrounding the bespoke AIP-based fee calculation we would round down the fee to the nearest multiple of £50. The online fee calculation tool demonstrated that the rounding down would always be the very last step of the calculation. We noted that the Proposed Regulations inadvertently suggested, instead, that the cap should apply as it stands (i.e. £333.33 or £116.66), without any rounding down. Given that this would not be in line with the approach set out in the June 2011 statement, we decided to reduce the cap for an AIP-based bespoke fee for a 8.33 kHz channel fees from £333.33 to £300 and from £116.66 to £100. By doing so, the new cap takes into account the rounding down effect.
- 3.29 For Very High Frequency Data Link licences we removed the reference to 8.33 kHz as no licences will be issued with this bandwidth. Instead the fees are described in either 25 or 50 kHz channels.
- 3.30 These changes are in line with the proposals as set out in the June 2011 statement.
- 3.31 Although we stated in the Notice that the Aeronautical Ground Station (Fire) licence was to be removed from the 2011 Regulations, this was not reflected in the Proposed Regulations. We therefore have amended paragraph (2) of Regulation 5 to provide that all of the entries relating to the licence class “Aeronautical Ground Station (Fire)” in Columns 1 to 4 of Schedule 2 to the 2011 Regulations shall be omitted.
- 3.32 For the new Aeronautical Station (Recreational Aviation) licence class, we have moved the fee from column 3 to column 2 in schedule 2 of the 2011 Regulations. This is because that fee is a fixed sum (rather than a variable sum), being equal to £75 per licence.
- 3.33 It came to our attention that there was an error in the definitions section of the 2011 Regulations. This related to the definition of “medium usage bands” and “VHF Band II”. We incorrectly had stated that the band 177.20625 to 207.49375 MHz was VHF Band II when in fact it is VHF Band III. We have therefore amended the definitions from VHF Band II to VHF Band III in both instances it appears. This is an editorial change and does not impact on licensees.

Final scope of Regulations

Ofcom’s decision

- 3.34 Accordingly, Ofcom has decided to make the Regulations as proposed, subject to the amendments described above. The Regulations will come into force on 3 May 2012. They are summarised below.

Extent of application

- 3.35 The Regulations will apply in the United Kingdom, the Channel Islands and the Isle of Man, subject to formal adoption by the Island Authorities. However, as mentioned in paragraph 3.24, the new aeronautical licence classes will not be issued for those stations in the Channel Islands or Isle of Man.

The Regulations

- 3.36 Regulation 3 inserts definitions for the new aeronautical licence classes, including the “designated operational coverage” (DOC), and outlines that the emergency channels (121.5 MHz, 121.6 MHz and 123.1 MHz) are regarded as “excluded channels”, so that their use will be free of charge. It also replaces the VHF Band II definition as the correct term should be VHF Band III.
- 3.37 Regulation 4 amends the 2011 Regulations to continue to permit the payment of a pro-rated licence fee for short term Aircraft licences. This Regulation makes also some further changes to Regulation 4(4) of the 2011 Regulations, which provides for pro-rated licence fees, in order to take account of prescribed payment intervals longer than 12 months.
- 3.38 Regulation 5(2) amends Schedule 2 of the 2011 Regulations. It removes the Aeronautical Ground Station (Fire) licence class from Schedule 2 of the 2011 Regulations, so that this licence class will become free of charge. In addition, this regulation provides for the fee payable for the new aeronautical licence classes for an aeronautical station by specifying the licence charging basis and, where appropriate, by reference to the relevant part of Schedule 15. Finally, this regulation extends the prescribed payment interval for the Aircraft and the Aircraft (Transportable) licence classes from 12 to 36 months.
- 3.39 Regulation 5(3) updates the charges relating to BBC and ITN Broadcasting Services, by reducing the payable fee.
- 3.40 Regulation 6 corrects an editorial error in Schedule 4 of the 2011 Regulations relating to the frequency bands for Transportable Earth Station licences.
- 3.41 Regulation 7 amends Schedule 5 of the 2011 Regulations in order to correct an error relating to a population density grid square.
- 3.42 Regulations 8 and 9 introduce the second phase increase in fees for Coastal Station Radio (UK) and (International) licence classes.
- 3.43 Regulation 10 inserts a new schedule containing the charging mechanism for some licences for an Aeronautical station as referenced by regulation 5(2) based on whether the service authorised is Area, Broadcast or Circular.

Annex 1

Respondents

General Aviation Alliance

NATS

Name withheld 1

Name withheld 2

BAE Systems Marine Ltd Maritime-Submarines

Thames Valley Microlight Club

Trevor Harris

Annex 3

Glossary

| | |
|---------------|---|
| ACARS | Aircraft Communications Addressing and Reporting System |
| AFIS | Aerodrome Flight Information Service |
| AIP | Administered incentive pricing |
| CAA | Civil Aviation Authority |
| DOC | Designated Operational Coverage |
| DSO | Digital Switchover |
| GHz | Gigahertz |
| MHz | Megahertz |
| NM | Nautical Miles |
| OPC | Operational Control |
| RIA | Regulatory Impact Assessment |
| SRSP | Strategic Review of Spectrum Pricing |
| VDL | Very High Frequency Data Link |
| WT Act | Wireless Telegraphy Act 2006 |