

Title: Minor Amendments to the WTA IA No: RPC Reference No: Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)			
	Date: 20/04/2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
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Summary: Intervention and Options				RPC Opinion: EANDCB Validated

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0m	£0m	£0m	In scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Wireless Telegraphy Act (WTA) requires that radio equipment may only be used under the grant of a licence, except where regulations have been made to exempt specific types of apparatus from needing a licence to use it. Ofcom is the national regulator for the communications sector, and is responsible for enforcement of the WTA. There are two areas of the Act, which are hampering Ofcom's ability to effectively enforce the act, which Government would like to amend. Making these amendments would improve the efficiency and effectiveness of enforcement under the Act, and will reduce costs to Ofcom.

What are the policy objectives and the intended effects?

The policy objective is to remove inconsistency, allowing Ofcom to more effectively enforce the act, and to reduce the costs to Ofcom of storing seized property. This improved enforcement ability could act as a disincentive to firms to breach the WTA, which has benefits for consumers and for Ofcom.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do Nothing

Option 2 (Preferred Option): Minor Amendments. The preferred option is to make two minor amendments to the WTA. The amendments relate to:

- Retention of seized property;
- Limitation of time and the application of section 27 of the Magistrates Court Act 1980.

These amendments are set out in the supporting evidence.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 07/2022				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	
			Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister :  **Date:** 21 April 2016

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised.

Other key non-monetised costs by 'main affected groups'

Measure 1 (retention of seized property): There is a potential risk of firms having their seized property disposed of after 12 months, when they would have previously had 18 months to reclaim it. However, the evidence shows that this scenario is highly unlikely, and would have only occurred in 1 out of 3,000 cases in the last 5 years

Measure 2 (limitation of proceedings): There could conceivably be an increase in the number of cases brought against business by Ofcom.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised.

Other key non-monetised benefits by 'main affected groups'

The amendments could act as a disincentive to breach the WTA, leading to benefits for consumers. There will also be a cost saving to Ofcom.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	
			0

SUPPORTING EVIDENCE

Problem Under Consideration and Rationale for Intervention

The Wireless Telegraphy Act (WTA) sets out the terms and conditions by which providers of communication services must oblige. Ofcom is the national regulator for the communications sector, and is responsible for enforcement of the WTA. There are two areas of the Act, which are hampering Ofcom's ability to effectively enforce the act, which Government would like to amend.

The first area relates to the retention of storage of seized property, which places a large, unnecessary, and disproportionate burden on Ofcom to retain seized property for an extended period of time, resulting in costs to Ofcom.

The second area relates to the time limitation of bringing proceedings under the WTA, which is hampering Ofcom's ability to build an effective case due to the time limit. It also creates an inconsistency with other pieces of legislation under which Ofcom can bring similar proceedings.

Making these amendments would improve the efficiency and effectiveness of enforcement under the Act, and will reduce costs to Ofcom.

Policy Objective

The Government would like to make two minor amendments to the current wording of the WTA. The two amendments are set out in more detail below, but the policy objective in making these changes is to give Ofcom greater ability to enforce the Act and to bring proceedings against those who commit summary offences under the Act. Furthermore, the amendments will improve Ofcom's efficiency in enforcing the Act, with a benefit to the public sector and to consumers.

Policy Options

Option 1. Do Nothing

Make no amendments to the WTA. This represents the counter-factual.

Option 2. Minor Amendments to the WTA

The preferred option is to make two minor amendments to the WTA. These amendments are as follows:

1) Amending the time in which Ofcom is required to retain seized property

Ofcom have the power to seize property if they believe it has been used in the contravention of the WTA. Under the WTA, Ofcom cannot dispose of seized property until a minimum of 18 months. This results in storage cost to Ofcom. The vast bulk of this is apparatus that has been involved in the commission of offences contrary to the WTA.

For example, if Ofcom seized an illegal transmitter and other apparatus at a transmission site without any involved persons being arrested and there are no identifying marks on the apparatus, other than the frequency to which it is attuned (which would identify the illegal activity e.g. the pirate radio station), no one will come forward to claim the property – if they did, Ofcom would interview them and investigate with the possibility of prosecution.

Where people are prosecuted, Ofcom generally get a forfeiture order from the court and are able to dispose of that property fairly quickly upon conviction. In the case of the former scenario, Ofcom end up having to keep it for 18 months in line with the provisions of section 101(2) & (5) of the WTA. This is because the current 12 month retention period only begins once the 6 month window allowing for proceedings to be initiated has expired. In the latter scenario, the current 12 month retention period only begins once proceedings against the owner have **concluded**.

The policy intention is to reduce these storage costs by reducing the standard retention period from 12 months to 6 months, so that the time Ofcom is required to store the property when proceedings are not initiated is a maximum of 12 months. We believe this is sufficient time for Ofcom to be required to store seized property while it tries to identify who the rightful owner is.

2) Proceedings for an offence under the WTA to be exempted from the limitations of the Magistrates Court Act (MCA) 1981

The MCA provides that, except as otherwise expressly provided by any enactment, a magistrates' court must not try any information or hear a complaint unless the information was laid, or complaint made, within six months from the time when the offence was committed.

The summary offences under the WTA are currently subject to the limitations of the MCA, but the Radio Equipment and Telecommunications Terminal Equipment Regulations (RTTE) 2000 and Electromagnetic Compatibility Regulations (EMC) 2006 Regulations have their own enactments whereby proceedings for offences committed under them can be commenced within 12 months from the time the offence was committed (applicable to RTTE) and at any time within three years from the date of the offence (applicable to EMC). Ofcom enforcement officers often conduct investigations into apparatus that may contravene the WTA and also be non-compliant with the requirements of the RTTE and/or the EMC.

Currently, the shorter time limits for bringing proceedings for offences under the WTA and the complexity of those investigations means that in practice proceedings will often be commenced for offences under the RTTE Regulations or EMC Regulations rather than for offences under the WTA. The changing nature of harmful interference investigations has become more complex, and the six month time limit for commencing proceedings in relation to offences committed under the WTA can mean that investigators have to put forward for prosecution (in relation to offences committed under the WTA) matters where the full extent of the evidence may not yet be known, in order to meet the six month time limit.

We therefore wish the time limit for summary offences committed under the WTA to be three years from the offence being committed, provided that proceedings are brought within 12 months from the date on which the prosecutor has sufficient knowledge of the offence having been committed.

Non-regulatory options

No alternatives to regulation have been considered, as the policy problem is due to the drafting of current legislation, which the preferred option proposes to amend.

Monetised and non-monetised costs and benefits of each option

There are two measures to consider. Each will have separate impacts and separate scopes.

Costs

Measure 1: Retention of seized property

By reducing the maximum amount of time for which Ofcom is required to retain seized property from 12 months to 6 months (where proceedings are not brought, the total time that Ofcom would be required to hold the property would be 12 months - 6 months for possible proceedings and a further 6 months retention), there is a potential risk for firms who would have had property seized and kept for the longer retention period before being returned, losing out under the new regime. Although this is a credible risk, it is important to look at the evidence from previous cases as a counter-factual.

Firstly, the time limit only begins once proceedings against the owner have **concluded** or when the **window** allowing for proceedings to be initiated (currently 6 months) has expired. In other words, the length of proceedings have no impact on the risk of reducing the time limit. For example, smaller firms who cannot afford legal assistance and would take longer to challenge the seizure, will not be disproportionately affected.

Secondly, between 2010 and 2015, 3,152 items of property have been seized by Ofcom under the WTA. Of these, 246 were returned. Where proceedings were brought, no items were restored beyond 6 months following the conclusion of proceedings. Where proceedings were not initiated, only one item was restored after 12 months following the date of seizure.¹

It is important to note that although Ofcom seized 3,152 items between 2010 and 2015, multiple items can belong to a single firm, so the number of firms in scope is significantly less than 3,000.

Summary

Although we recognise that there is a potential risk for impacts on business from this policy, the evidence shows that this risk is particularly low, given then there is only one case out of 3,152 in the last five years where an item of property was kept for longer than 12 months, where proceedings were initiated, before being restored, and therefore is in scope of this proposed change.

In summary, we do not estimate any costs to business resulting from this amendment.

Measure 2: Limitation of time and the application of section 27

Ofcom have estimated that they currently get around 40 cases per year that would be in scope of this amendment. For a wider context, there were 293 contraventions of the WTA identified by Ofcom in 2014.

This amendment could potentially lead to an increased number of cases being brought by Ofcom, which could lead to an increase in costs to business, as well as a public sector cost to the court system from the increased number of cases. However, given that Ofcom currently bring proceedings under the RTTE or EMC when they cannot bring them under the WTA, the total number of cases being brought by Ofcom is unlikely to increase.

The benefits of the amendment relate to Ofcom being able to conduct fuller and more robust investigations, thus increasing the likelihood of successful prosecution. Given that one of Ofcom's main duties is to 'further the interest of citizens and consumers', improving their ability to prosecute those that commit offences under the WTA will benefit consumers.

Summary

In summary, we do not estimate any costs to business resulting from this amendment, and we expect a benefit to both Ofcom and to consumers.

Case Study: Ofcom have provided an example case where the amendment would have applied:

"An example of an imbalance in the summary only time limits that adversely affected our investigation concerned a company who were placing on the market non-compliant Cell Enhancers. Ofcom executed a search warrant at their premises and seized in excess of 60 cell enhancers, or repeaters, with an estimated total value of around £15,000. This company were supplying over 100 cell enhancers a month and the investigation involved

¹ Source: Ofcom

contacting customers who had unwittingly purchased such apparatus and obtaining evidence from them against the supplier.

When the premises were searched, evidence was gathered of the person using a repeater which was fully operational when Ofcom officers were present. A case was prepared for prosecution (the first case of its kind by Ofcom); however the time taken in having the products tested and evaluated for the compliance offences meant that the WTA matter ran 'out of time' and the WTA matters were dropped."

Benefits

The objective of both measures is to improve Ofcom's ability to enforce the WTA. The purpose of the WTA is to regulate the communications sector in order to make the most efficient use of the finite resources used by the sector (such as spectrum). The WTA is also designed to protect consumers in the industry. Improving Ofcom's ability to enforce the WTA could act as a disincentive to firms to breach the WTA, potentially leading to fewer breaches. Fewer breaches of the WTA would have consequential benefits to consumers of electronic communications services.

Direct costs and benefits to business calculations

Government expects there to be no costs to business as a result of either amendment. This measure is in scope of the Business Impact Target, and qualifies as **zero net cost**.

Therefore, the EANCB and NPV are 0.