

Title: Financial penalties for Breaches of WTA Licence Conditions IA No: Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)					
	Date: 11/04/2016					
	Stage: Final					
	Source of intervention: Domestic					
	Type of measure: Primary legislation					
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Summary: Intervention and Options					RPC Opinion: EANCB Validated	

Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as	
£0m	£0m	£0m	Yes	Zero Net Cost	

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

Businesses operating in the UK that hold a Wireless Telegraphy (WT) licence are subject to the terms, provisions and limitations (collectively referred to as “conditions”) of the licence in accordance with the Wireless Telegraphy Act (WTA) 2006. Failure to comply with the licence conditions is an offence under the WTA.

Ofcom, the regulator for the UK communications industries, has the authority to issue a WTA licence and is also responsible for investigating all suspected licence breaches, and for administering associated sanctions in accordance with the WTA. The current enforcement measures available to Ofcom (prosecution, licence revocation, fixed penalty notices for minor offences and, in very limited circumstances, the application of financial penalties), are not effective deterrents. Revocation or prosecution are often disproportionate to the offence and therefore rarely used, while fixed penalty charges are too low to provide a significant and reliable disincentive to a serious breach.

Therefore, the use of existing powers is not proportionate or flexible enough to deal with today’s market conditions and there is therefore a credible rationale for government to amend the WTA, in order to allow Ofcom to act more flexibly in applying financial penalties for breach of WTA licence conditions

What are the policy objectives and the intended effects?

This policy is designed to improve Ofcom’s ability to effectively deter and punish licence holders who breach the conditions of their WT licence. Extending the scope of this provision will provide a greater incentive for licence holders to meet the conditions of their licence agreement, ultimately reducing the number of breaches that occur, which has benefits for both consumers and Ofcom.

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

Do Nothing: The do nothing option makes no change to the regulatory regime, maintaining the primary enforcement measures for non-compliant licensees in the majority of cases as being either revocation, prosecution, or a fixed penalty notice.

Option 1: The preferred option is to legislate to introduce a similar provision to the financial penalty within s43A of the WTA so that it may be applied to any contravention of a WT licence condition where a financial penalty cannot currently be applied. The fine shall be determined by the nature and severity of the breach, among other things, but shall not exceed 10% of the firm’s gross revenue. This will be in addition to the system of prosecution/revocation currently in place.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 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:
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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
SELECT SIGNATORY:



Date: 21/04/2016

Summary: Analysis & Evidence

Policy Option 1

Description: Extend the WTA breaches sanctions regime.

FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	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'

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

There is potential for the expanded penalty regime to have a financial impact on firms that breach their licence conditions. This is uncertain given the individual nature of each potential fine and the expected behavioural change by firms. There may also be some administrative costs to both business and Ofcom. However, given that these costs would arise from non-compliant activity, they are not counted in OITO or EANCB.

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	NA	NA	NA

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

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

Consumers are likely to benefit in the long run from a reduction in the number of licence breaches and in the improved efficacy and efficiency of the spectrum licencing regime.

Key assumptions/sensitivities/risks

The number of firms that could be affected, as behaviour changes.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	Zero net cost

Evidence Base

1. Background

“Radio spectrum” is the name given to that part of the electromagnetic spectrum falling between the frequencies of 3kHz to 300GHz, which is useful for wireless communication. Uses of radio spectrum include TV broadcasting, radio broadcasting, mobile telephony and wireless Internet services. Businesses operating in the UK that hold a Wireless Telegraphy (WT) licence are subject to the terms, provisions and limitations (collectively referred to as “conditions”) of the licence in accordance with the Wireless Telegraphy Act (WTA) 2006. The licence will specify the service or services that it covers and the radio spectrum frequencies that the licensee can use. Failure to comply with the licence conditions is an offence under the WTA.

2. Problem Under Consideration

Ofcom, the regulator for the UK communications industries, has the authority to issue a WTA licence and is also responsible for investigating all suspected licence breaches, and for administering associated sanctions¹ in accordance with the WTA.

When dealing with breaches of a WT licence, the current enforcement measures available to Ofcom are:

a) Imposition of a fixed penalty notice (currently £100) under s96 WTA for minor, summary only offences – a standard administrative penalty where it would be disproportionate to apply more serious sanctions;

b) Imposition of a financial penalty under very specific circumstances:

- Contravention of a condition by multiplex licence holders (s42 WTA) – amount of penalty not exceeding the greater of £250,000 and 5% of gross revenue (s43 WTA);
- Contravention of a condition inserted into a licence following direction from Secretary of State (s43A WTA) – amount of penalty not exceeding 10% of gross revenue;

c) Prosecution (on the basis that it is unlawful to engage in wireless telegraphy except under and in accordance with a WT licence);

d) Revocation of a licence, which could potentially have a high cost to the public (who benefit from the service provided by the licensees), meaning that Ofcom are highly unlikely to revoke a licence in these circumstances.

It is important to highlight that the imposition of either a fixed penalty notice under s96 WTA or a financial penalty under s42 and s43A WTA discharge liability to criminal prosecution. Therefore, if Ofcom consider that a contravention has taken place, they have to decide whether to pursue a criminal prosecution under s41 WTA or whether they wish to impose a penalty (if applicable) under s96, s42 or s43A. These options are mutually exclusive, as a penalty cannot be imposed where proceedings have been brought.

In 2014, Ofcom issued 104 Contravention Notices under section 39 of the Wireless Telegraphy Act 2006 (1 of which was issued in error), as a result of actual breaches of the terms & conditions of a licence. A Contravention Notice gives a set period of time (determined by Ofcom) for representation to be made by the recipient, and Ofcom may not commence proceedings until the end of that period. In addition, if at the end of that period, the apparatus/licensee is compliant, no proceedings may be brought. Ofcom

¹ It should be noted that there is an appeals process that is external to Ofcom.

policy is such that, should the apparatus/licensee be compliant at the end of the period allowed under section 39, the maximum sanction that can be authorised would be a warning letter. Therefore, of the 103 Notices served, the eventual outcome resulted in 71 warning letters, 28 cases were no further action was taken, and 4 Fixed Penalties Notices.

3. Rationale for Intervention and Policy Objective

Government does not consider the current sanctions regime as either proportionate or flexible enough to act as sufficient deterrents against breaching WT licences.

Firstly, the fixed penalty is too low to act as any kind of serious deterrent to the vast majority of licenced firms, while the conditions for imposing a financial penalty are too restrictive to apply in the vast majority of cases.

Secondly, having to rely on revocation or prosecution as the primary tools for addressing a licence breach means that these enforcement measures are often disproportionate to the offence and therefore rarely used. Revocation, in particular, can cause issues for consumers (for example, they may be left without a service) and the impracticalities of applying this mean that it does not act as a significant and reliable disincentive to breach.

The current sanction methods available to Ofcom do not act as a sufficient deterrent to breaching WT licences. The policy objective is therefore to provide Ofcom with a wider range of available sanctions in response to breaches of the WTA licences, which will provide a greater incentive for licence holders to meet the conditions of their licence agreement, ultimately reducing the number of breaches that occur and the time taken to remedy breaches, with benefits for both citizens and consumers (and lower costs for Ofcom).

4. Description of Options Considered (including do nothing)

Do Nothing: The do nothing option makes no change to the regulatory regime, maintaining the primary enforcement measures for non-compliant licensees in the majority of cases as being either revocation, prosecution, or a fixed penalty notice.

Preferred Option: The preferred option is to legislate to introduce a similar provision to the financial penalty within s43A of the WTA so that it may be applied to any contravention of a WT licence condition where a financial penalty cannot currently be applied. Government wants to expand the scope to which financial penalties can be applied, beyond the current specifically defined circumstances, so that Ofcom can act more flexibly in its enforcement of WTA licences.

The fine shall be determined by the nature and severity of the breach, among other things, but shall not exceed 10% of the firm's gross revenue. This will be in addition to the system of prosecution/revocation currently in place. This policy is designed to improve Ofcom's ability to effectively deter and punish licence holders who breach the conditions of their WT licence. Extending the scope on which financial penalties can be applied will provide a greater incentive for licence holders to meet the conditions of their licence agreement, ultimately reducing the number of breaches that occur, which has benefits for both citizens and consumers (and lower costs for Ofcom).

5. Monetised and Non-Monetised Costs and Benefits of Each Option

Option 1: Do Nothing

This is the baseline with an NPV equal to zero.

Option 2: Changes to Penalties for a WTA Licence Breach (Preferred Option)

The preferred policy option would enable Ofcom to impose, in relation to breaches of WT licences conditions where a financial penalty cannot currently be applied, a financial penalty that Ofcom considers to be appropriate and proportionate to the nature of the breach, but which shall not exceed 10% of gross

annual turnover of the firm involved. This is equivalent to the penalty that Ofcom can already impose in the case of certain specific breaches of WTA licences, as set out above. The Government considers that this will give Ofcom sufficient flexibility to impose proportionate and effective penalties.

The level of penalty should be set at a rate that achieves optimal balance between deterrent and proportionality. The ultimate aim is not to act as a revenue earner for Ofcom, but to act as a disincentive to firms to breach their licence agreement.

Costs to Business

This penal regime represents a potential cost to business. However, it is impossible to accurately quantify the total cost to business of the proposal, as each fine would be determined by the circumstances surrounding, and the severity of, the breach, and the individual circumstances of the licensee. Therefore, there is no average to aggregate and no fixed guideline amount to use as a base.

Ofcom report that in 2014 there were 104 Contravention Notices issued under s39 of the WTA (1 of which was issued in error). The minor nature of many of these breaches means that the issue of a fixed penalty notice may have been the appropriate and proportionate response, even if Ofcom had had the power to impose a financial penalty up to 10% of turnover. However, the aim of the policy is to provide Ofcom with greater flexibility when considering potential sanctions so that, when appropriate, they can apply a proportionate response to the nature of the breach e.g. a fixed penalty notice would not be considered appropriate for breach of a mobile coverage obligation, but neither would prosecution or licence revocation. The aim of the policy is to act as a disincentive to breach, so there is likely to be a reduction in the number of breaches in response to this change. As an estimate, Ofcom have suggested that it would not expect to impose more than 1 or 2 financial penalties over a decade (and, indeed, that they might never need to impose a financial penalty if the possibility of a financial penalty acts as an effective disincentive to breach licence conditions).

There would also be an administrative cost to firms, which is associated with the actual payment of the fine, plus any costs related to appeals. Ofcom suggest that the administrative process would be a simple one involving raising a one-off payment. They therefore consider that the cost to industry is likely to be very low. These costs would be faced by both business and Ofcom.

Better Regulation guidance states that 'costs incurred as a direct result of non-compliant activity should not be included' in EANCB calculations. There are no costs to businesses who are compliant with their licence obligations.

Costs and Benefits to Ofcom and Consumers

This option is designed to improve the ability Ofcom have to effectively deter and punish licence holders who breach the conditions of their licence related to the WTA. The more effective disincentive to breach will ultimately reduce the number of breaches that occur, which has benefits for consumers and for Ofcom.

Ofcom could face administration costs related to the investigation of the breach. Ofcom have identified one relevant case in the last 5 years, which created total administration costs (including common costs) to Ofcom of £30,322. It should be noted that this is the only case that Ofcom could identify to be a relevant example, and therefore should not be thought of as a robust general estimate. However, it does provide an indication into the order of magnitude of the potential costs. In the case of a breach and subsequent monetary penalty on the licence holder, the revenue of the fine would go into the consolidated fund.

As WTA requirements protect consumer benefits and assist with spectrum management, a reduction in the number of breaches of these requirements would have a benefit to consumers, and to taxpayers via the effective running and efficient usage of spectrum.

6. Direct Costs and Benefits to Business (OITO and EANCB)

The Better Regulation Framework Manual states that "when calculating both the NPV and EANCB of a policy, any costs that are incurred as a direct result of non-compliant activity should not be included".

Therefore, all identified costs to business are out of scope of the EANCB and OITO. Thus, the EANCB is £0, and the measure counts as zero net cost.

7. Risk and Assumptions

The most important uncertainty is the number of firms that will be affected, as this is dependent on the number of future breaches of the WTA. Although we know the number of breaches that occurred in 2014, we cannot predict how many would occur under the new regime, as incentives change.