

CONSULTATION ON THE PROPOSAL TO ALLOW FIXED PENALTY NOTICES FOR SUMMARY WIRELESS TELEGRAPHY ACT OFFENCES

GOVERNMENT RESPONSE

INTRODUCTION AND BACKGROUND

1. The Wireless Telegraphy Act 1949 (WT Act 1949) regulates the use of radio equipment. The purpose of the regime is to reduce interference between users and to maintain the most effective and efficient use of spectrum. The WT Act 1949 provides for a number of criminal offences to enforce the regime.

2. In order to lighten the touch of the regulatory regime, the Communications Act 2003 (CA 2003) enables the less serious offences under the WT Act 1949 to be dealt with by fixed penalty notice rather than prosecution.

3. In December 2005 the DTI published a consultation proposing that in relation to certain minor offences under the WT Act 1949 a system of fixed penalty notices should be introduced as a possible alternative to prosecution. A fixed penalty of £100 was proposed. This would only apply to minor offences involving use of non-broadcast transmitter equipment in contravention of the licence requirements of section 1(1) of the WT Act 1949.

4. The introduction of fixed penalty notices for such offences is provided for under section 180 of, and Schedule 6 to, the CA 2003. Schedule 6 sets out the scheme for the fixed penalties regime and provides for the Secretary of State to make regulations to prescribe the amount of the penalty for a relevant offence. A “relevant offence” is an offence that can be tried only summarily. Typically these would include the most common transgressions, operating transmitters, without a licence where one is required, outside the conditions of a licence or outside the conditions that allow exemption from the need for a licence.

5. The proposals therefore, do not cover more serious offences in connection with both licensed and illegal (i.e. unlicensed) broadcasting. It is also proposed not to bring into the regime offences involving receive-only apparatus.

RESPONSES RECEIVED

6. A total of 26 substantive responses on the consultation paper were received (see Annex A for details).

7. The majority of responses were from individuals with some major companies with an interest in radio spectrum also commenting.

8. The majority of responses were supportive. However, a small minority were opposed.

RESPONSES BY QUESTIONS

Question 1

Do you agree that the Secretary of State should introduce a fixed penalty regime for certain minor WT Act 1949 offences?

9. There were 24 responses to this question, 21 of which supported the proposal as a sensible and appropriate way of dealing with minor Wireless Telegraphy Act offences. Two respondents objected. One of these provided no grounds for their objection. The other considers that fixed penalty schemes undermine the process of justice in that guilt must be proved. And that the use of fixed penalties for traffic and parking offences has discredited all such regimes.

Government response

The Government notes majority support for the proposal and intends to introduce a fixed notice regime before the end of March 2007.

Question 2

Do you agree the proposal that section 1(1) offences, when triable summarily, (other than receive only ones), are appropriate for a fixed penalty regime and should be the subject of the first Fixed Penalty Regulations?

10. There were 24 responses to this question, 18 of which indicated support. Two respondents were opposed to the proposal.

11. One respondent had two concerns;

- that penalties should not be applied for failure to obtain a free licence
- that penalties should not be applied for offences caused inadvertently or through ignorance the example given is spurious emissions.

12. However, another respondent considers that there are three categories of section 1(1) WT Act offence.

- i) broadcasting without a licence which as it is triable either way is not appropriate for the proposed penalty fines regime.
- ii) a receive only offence which is rarely used
- iii) an offence which can be applied to a wide range of radio use but is an absolute offence, or of strict liability, therefore the knowledge that you commit an offence, guilty knowledge, can be no defence.

13. The same correspondent also considers that sections 172-174 of the Communications Act 2003 require that a Conformity Notice be issued in normal cases before a penalty notice or prosecution is considered.

14. Another respondent was in favour of extending FPNs to equipment not intended for radio transmission such as lighting equipment and power units.

15. And another is concerned that account should be taken of the effect on licensed users of transgressions. They considered FPNs might not be appropriate for serious interference cases, when some measure of harm caused by offenders be employed and Ofcom should prosecute in the first instance.

16. One respondent sees no reason to exclude receive-only offences.

Government response

The Government notes majority support for the proposal. Radio spectrum is either deregulated and licenses are not required or a licence at an appropriate fee, or in some cases free is required.

All radio users have a duty to ensure their equipment operates correctly and within their licence conditions.

The Government is keen, and Ofcom accepts, that light touch regulation means penalties will only be applied when necessary.

These are strict liability offences and if prosecuted would not require Ofcom to prove guilty knowledge or intent.

The Government notes the view that fixed penalty notices should be extended to equipment not intended for radio transmission. At this stage it is not proposed to extend FPN to other than Section 1(1) offences though the possibility of extending to other offences in the future will be retained.

The employment of the Conformity notice allowed for in sections 172-174 of the Communications Act 2003 is recognised as a valuable tool in promoting compliance and it is recognised that there are specific situations where a conformity notice is required to be issued prior to considering a fixed penalty notice or prosecution.

Question 3

Do you consider that the proposed level of penalty is proportionate and appropriate?

17. All the respondents commented on the proposed level of penalty and 13 supported the proposed level of penalty with 11 opposing it.

18. Several respondents considered the penalty too low and a variety of sliding scales were proposed as alternatives.

19. One respondent considered the sole purpose to generate revenue or recoup money lost due to licence avoidance.

20. Some respondents point out that the regime, as proposed, makes no allowance for repeat offenders.

21. Several also point out that no account is taken of the different types of radio users from private individuals to large multi-national companies to which fixed penalties could be applied.

22. One respondent considers the level of commercial impact should be taken into account when deciding whether to issue a fixed penalty notice..

23. Two respondents consider the seizure of equipment (used in the offence) would be a more effective form of enforcement or that equipment should be seized in addition to the penalty notice. One of these suggests that A FPN regime is being used to allow Ofcom to reduce the manpower dedicated to enforcement work.

24. One respondent believes that a penalty notice regime may formalise broadcasting without a licence.

Government response

The Government notes the variety of alternative penalties proposed and the number of respondents opposed to £100 penalty as proportionate and appropriate. It is also noted that the majority of those opposing consider the penalty too low or that in addition apparatus used in the offence should be seized. The maximum fixed penalty that can be made by law is 25% of the maximum fine applicable to the particular offence. Apparatus that does not operate as 'receive-only' can be seized as part of an investigation (for a maximum of six months) and can only be forfeited on conviction by order of a court.

The payment of fixed penalties is prescribed in section 180 and Schedule 6 of the Communication Act 2003 as being necessarily paid to the relevant officer. In all cases the relevant officer can only be a court official. Therefore Ofcom cannot recoup lost licence revenue by issuing fixed penalty notices. It is also unlikely that the proposed level of penalty would recover fully the costs of the investigation process or the issue of the notice.

It is inappropriate to consider those who pay fix penalty notices as offenders. They will not have been prosecuted and by paying the penalty no proceedings can be brought. In considering any subsequent offence or repeat offence Ofcom would take into account any previous convictions or FPNs.

If investigators consider that the £100 penalty insufficient deterrent to alleged commercial offenders Ofcom can bring proceedings. Alleged offenders can request to be tried, subject to court proceedings, cannot opt for a penalty notice.

Broadcasting offences under Section 1(1) of the Wireless Telegraphy Act are triable either way and therefore cannot be subject to the proposed penalty notice regime.

Question 4

The CA 2003 permits other matters relating to a fixed penalty regime to be covered in regulations. Do you think that anything else needs inclusion?

25. There were 24 responses to this question, 13 of which did not consider anything else needed inclusion. However, eight did raise other matters for inclusion.

26. One respondent wanted to see fixed penalties extended to illegal transmissions creating operational issues for legitimate users. As well as situations where faulty power or lighting equipment cause radio interference and the equipments owner does not act to remedy the situation.

27. One respondent suggested the right of appeal to an independent panel.

28. Three respondents would like to see fix penalty notices used to punish deliberate interference particularly that by amateur radio users on other amateurs radio users.

29. Two respondents suggest a penalty points system, and the maintenance of records for five years similar to the keeping of criminal records on the Police National Computer (PNC).

30. One respondent requests further consultation as part of any future review.

31. One respondent is concerned that the current legislative climate allows for the misuse of [enforcement powers].

32. One respondent considers the confiscation and destruction of equipment should be the penalty for those who persistently misuse radio.

Government response

The Government notes the view that fixed penalty notices should be extended beyond summary cases and to equipment not intended for radio transmission. The Government's view is that some matters are too serious (unlicensed broadcasting for example) for a fixed penalty and should always be prosecuted. The most common non-radio equipment to cause interference are faulty thermostats. The Government is minded to consider extending powers in these cases should Ofcom request them. However, the circumstances described are rare and additional powers may not at this time benefit the public, Ofcom or the Courts.

The Government does not consider an independent panel would contribute to the reduction of the administrative or bureaucratic burden that is part of the purpose of the introduction of a fixed penalty regime. Those convinced of their innocence should refuse to pay the fixed penalty and require Ofcom to prosecute.

The Government is not minded to extend fixed penalties beyond WT Act, Section 1(1) offences such as deliberate interference at this time. However, if FPN regime proves a success the roll out to other offences may be considered.

Offenders who pay fixed penalty notices do not receive a criminal record. Nevertheless it will be necessary for Ofcom to retain details of those who have paid fixed penalties.

The Government accepts the need for further consultation should changes be proposed to these regulations.

People receiving a fixed penalty notice retain the right to trial. If they believe themselves innocent of the offence they can in the first instance ask Ofcom to reconsider and withdraw the notice. Secondly, they can refuse to pay and invite Ofcom to prosecute.

The forfeiture of radio apparatus used in an offence can only be sanctioned by the court. Ofcom would have to successfully prosecute and convince the court that forfeiture would be part of an appropriate penalty.

OTHER ISSUES

33. In addition to responding to the questions asked in the consultation paper, some consultees sought clarification on specific proposals and offered opinions about fixed penalty regimes and the regulation of radio spectrum.

34. One respondent believes that section 8 of the consultation document makes it clear that intensive licence examination operations will happen at marinas. And that FPN powers will remove normal protection from over-zealous officials. However, another respondent believes that campaigns at marinas would be difficult for Ofcom to manage without detracting from more urgent safety of life interference work. This is because of reductions in the Ofcom investigation force.

35. One respondent does not believe penalties will not be paid to Ofcom or the DTI and that they will inevitably be paid to the Government.

36. The same respondent does not regard a fixed penalty regime as light touch and foresees the possibility of entrapment.

37. One organisation asked if police officers would be the only authority enabled to bring this penalty? And if not who else?

38. The same organisation asked if police officers would be aware of the conditions under which licensed users are allowed to operate?

39. Also if there will be provision for licensed operators to present their Validation document at a police station within a certain period of time?

40. Several respondents asked if fixed penalty notices would deal with the content of transmissions such as grossly offensive or indecent, obscene or menacing messages.

41. Two respondents had concerns about reductions in the numbers of Ofcom investigation officers undermining what they envisaged as potentially useful enforcement tool.

Government response

Any actions at Marinas would likely be by way of a specific campaign which would be advertised in advance.

The Communications Act 2003 prescribes that penalty payments must be made to the relevant officer. The relevant officer is always a court administrator. The DTI and Ofcom do not benefit financially from penalty payments.

The introduction of a fixed penalty notice regime is consistent with a light touch approach to regulation.

A police officer would not be able to issue fixed penalty notices for WT Act offences. Section 180 of the Communications Act 2003 refers specifically to Ofcom issuing these notices.

Fixed penalties could be used if behaviour on air contravened the terms and conditions of their licence.

[Ofcom response on investigation officer numbers]

Ofcom does not believe changes in number of investigation officers will compromise its ability to manage spectrum interference issues.

RESPONSES OUTSIDE THE SCOPE OF THE PROPOSAL

42. One respondent commented that the biggest problem facing marine VHF users is the conduct of other users, monopolizing the limited number of channels and seemingly unaware of correct procedures. Reallocating unused duplex channels and monitoring authorities issuing advice over the air could resolve these problems.

43. Another respondent comments that the maximum fine of £5000 is not enough to penalise those who engage in illegal broadcast radio, that a greater maximum fine may have more deterrence.

Government response

Ofcom recognised the need for marine VHF users to use correct procedures. It produces information booklets to assist users. Re allocating channel usage is not part of this consultation.

The maximum penalties for illegal broadcasting, at Crown Court, are unlimited fine and two years in prison.

CHANGES IN THE LIGHT OF CONSULTATION

The Government is persuaded to introduce a fixed penalty regime as proposed. However, the views of respondents concerning increasing the level of the penalty and/or introducing a penalty sliding scales is noted. The respondent proposals to widen the coverage to other radio offences and/or equipment affecting the efficient use or reception of radio is also noted.

NEXT STEPS

44. A Wireless Telegraphy Bill, which consolidates current radio legislation has begun progress through the Parliament. The Government would therefore

not expect to introduce any fixed penalty regulations until that progress is complete.

45. The need for wireless telegraphy legislation consolidation was identified by the Law Commission.

46. The Better Regulation Task Force (BRTF) has noted that consolidation is a means of “bringing together different regulations into a more manageable form and restating the law more clearly”.

ANNEX A

RESPONSES TO THE CONSULTATION

Responses to the consultation were received from the following organisations.

Please note this list excludes responses made in confidence

Clubs, Associations and Societies

Hoddesdon Radio Club

Reading and District amateur Radio Club

Royal Yacht Association

Chelmsford Amateur Radio Society

Conference of Yachting and Cruising Clubs

Operators

Joint Radio Company Ltd

BT

Vodaphone

Government organisations

Port of London

Civil Aviation Authority

Individuals

James Flint

Geoff Blake

Tim Barlett

Paul Cresswell

Peter Davies

Ray Brooks

Brian J Waddell

David Barber

Ian Abel

John Gilliver
John Bowen
Patrick Xavier

