

**EXPLANATORY MEMORANDUM TO
THE WIRELESS TELEGRAPHY (PRE-CONSOLIDATION AMENDMENTS)
ORDER 2006**

2006 No. 1391

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Order is a "pre-consolidation" order. It makes minor and largely technical modifications to existing wireless telegraphy legislation (currently contained in 6 different Acts) to enable it to be brought together in one Act by the Wireless Telegraphy Bill. These modifications will take effect immediately before the passing of the Act that will result from that Bill. That Act will then consolidate existing legislation as modified by this Order.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Background**

- 4.1 Section 407 of the Communications Act 2003 ("CA 2003") confers power on the Secretary of State to make by order modifications of the enactments relating to the management of the radio spectrum, and of enactments referring to such enactments, which in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments. The enactments relating to the management of the radio spectrum are:

- the Wireless Telegraphy Act 1949 ("WTA 1949")
- the Marine, &c., Broadcasting (Offences) Act 1967 ("MBOA 1967")
- the Wireless Telegraphy Act 1967 ("WTA 1967") (except Part 1)
- Part 6 of the Telecommunications Act 1984 ("TA 1984")
- the Wireless Telegraphy Act 1998 ("WTA 1998")
- Chapter 2 of Part 2 of CA 2003 and certain other provisions of CA 2003 so far as relating to any of the enactments mentioned above.

- 4.2 Section 407 CA 2003 provides that the order cannot be made unless a Bill for repealing and re-enacting the enactments modified by the order or enactments relating to the matters to which enactments modified by the order relate has been presented to either House of Parliament. The Wireless Telegraphy Bill ("WT Bill") consolidates the enactments relating to the management of the radio spectrum as set out above. It was introduced in the House of Lords on 20 April 2006 prior to this Order being laid. Once this Order has been made, it will come into force (in accordance with section 407) immediately before the

commencement of the Act resulting from the WT Bill. Therefore, the Act resulting from the WT Bill will consolidate existing legislation, *as amended* by this Order.

4.3 In general terms, this Order makes amendments of a technical nature which ensure consistency of approach in a number of areas. They are further explained in the Annex.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for Industry and the Regions, Alun Michael, has made the following statement regarding Human Rights:

In my view the provisions of the Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The Law Commission has identified wireless telegraphy as an area requiring consolidation.

7.2 In December 2003 management of the radio spectrum transferred from the Department of Trade and Industry (Radiocommunications Agency) to the newly created, independent, communications regulator: OFCOM. As manager of radio spectrum operating within the provisions of relevant existing Acts, OFCOM will be a major user of the consolidated legislation and therefore it has a significant interest in the consolidation.

7.3 The Better Regulation Task Force (BRTF) noted that consolidation falls under the general heading of simplification and is a means of 'bringing together different regulations into a more manageable form and restating the law more clearly. By improving transparency and understanding it should reduce compliance costs'. The wireless telegraphy consolidation will therefore contribute to the government's implementation of the BRTF 'Regulation – Less is more' recommendations which are at the heart of its Better Regulation programme. This consolidation will be included in the simplification plans of OFCOM and the Department.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Chenab Mangat at the Department of Trade and Industry Tel: 0207 215 1515 or e-mail: chenab.mangat@dti.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX – Modifications made by the Schedule to the Order

Paragraphs 1 and 2 of the Schedule

1. Section 14(7) WTA 1949 makes provision about civil proceedings in respect of conduct that also constitutes an offence. It relates to conduct that is unlawful under the WTA 1949. It is amended so that it also applies to conduct rendered unlawful by section 7 WTA 1967 (which is currently specified to be an offence under the WTA 1949). It is considered appropriate to make provision about civil proceedings in respect of conduct that constitutes an offence under both Part 2 WTA 1949 and section 7 WTA 1967 since these provisions are aimed at the same mischief – preventing undue or deliberate interference with wireless telegraphy.

Paragraphs 1 and 3 of the Schedule

2. Section 20(3) WTA 1949 is amended so as to allow Her Majesty by Order in Council to extend the provisions of section 1D WTA 1949 (procedure for granting WT licences) to the Isle of Man and the Channel Islands. Section 1D was inserted by the Telecommunications (Licensing) Regulations 1997 (SI 1997/2930), made under section 2(2) European Communities Act 1972. Since those regulations under section 2(2) could not themselves have made provision for the Islands, it is doubtful whether the power in section 20(3) could be used to extend their effect to the Islands. Currently there is an inconsistency because the other provisions about granting WT licences, and the procedural provisions about making grants of RSA, are capable of being extended to the Islands. Given the anomalous position of section 1D WTA 1949, as opposed to those other provisions, it is considered appropriate to secure that section 1D may be treated in the same way as the similar provision for grants of RSA. The extension to the Islands is not compelled and any provision may be extended with modifications.

Paragraph 4 of the Schedule

3. Section 14 WTA 1949 makes particular provision for forfeiture following conviction of an offence under WTA 1949. Section 82(4) TA 1984 extended the class of offences to which that particular provision about forfeiture applied. In the same Act, paragraph 3 of Schedule 3 expressly disapplied the general provision about forfeiture following conviction in section 43 Powers of Criminal Courts Act 1973 (and in the corresponding Scotland and Northern Ireland provisions). The class of offences to which the particular provision about forfeiture applied was further enlarged by section 172 Broadcasting Act 1990 to include offences under MBOA 1967, but that Act did not amend paragraph 3 of Schedule 3 so as to add a reference to MBOA 1967 offences. It is considered that this was an oversight. Paragraph 4 of the Schedule therefore amends paragraph 3 of Schedule 3 to the TA 1984 so that paragraph 3 disapplies the general provision about forfeiture in respect of offences under MBOA 1967, as well as in respect of offences under WTA 1949. (Section 43 Powers of Criminal Courts Act 1973 has been re-enacted as section 143 Powers of Criminal Courts (Sentencing) Act 2000 and paragraph 3 of Schedule 3 now refers to section 143).

Paragraph 5 of the Schedule

4. Section 4(5) WTA 1998 refers to revocation or variation of a wireless telegraphy licence (“WT licence”) if requisite or expedient for the purposes of complying with “a Community obligation of the United Kingdom or with any international agreement or arrangements to which the United Kingdom is a party”. The parallel provision for a grant of recognised spectrum access (“RSA”) refers to compliance with “an international obligation of the United Kingdom” which is defined (in section 405 CA 2003) as “includ[ing] any Community obligation of the United Kingdom and any obligation which will or may arise

under any international agreement or arrangements to which the United Kingdom is a party". The order amends section 4(5) WTA 1998 so that it refers to international obligations of the United Kingdom as defined in section 405 CA 2003. It seems inappropriate that the Bill should contain, in effect, different definitions of "international obligation of the United Kingdom" depending on whether a WT licence or a grant of RSA is involved. Despite the use of the word "includes" in section 405 CA 2003, it is considered that little would be covered by that definition that is not covered by the description in section 4(5). Section 4(5) is not the only basis upon which a WT licence may be revoked; the power in section 4(5) is in addition to provision about revocation and variation that may be contained in the licence itself.

Paragraph 6 of the Schedule

5. Certain amendments relate to terms used in the Acts being consolidated and are made so as to secure consistency.

(a) "Broadcast" has a different meaning in section 9(1) MBOA 1967 (broadcasting by wireless telegraphy for general reception) from section 405 CA 2003 (broadcasting by wireless telegraphy). The former applies to MBOA 1967 and certain provisions in WTA 1949. The latter is for the purposes of CA 2003. There are some references in WTA 1949 to "transmitting or broadcasting" to which neither definition is expressed to apply. The order applies the CA 2003 definition to those references in WTA 1949.

(b) "Frequency" is defined in section 405 CA 2003 as including "frequency band". This definition applies to "frequency" in the context of making grants of RSA. In connection with granting WT licences under WTA 1949, "frequency" is not defined. Certain provisions of CA 2003 refer to both WT licences and grants of RSA and refer to "frequency". In practice, a particular frequency has to be considered as one within a range of frequencies, and WT stations and apparatus work on a range of frequencies. The definition of "frequency" as including "frequency band" is therefore preferred. The order extends the definition in CA 2003 to WTA 1949.

(c) "Information" is defined in section 405 CA 2003 for the purposes of that Act, but is used also in WTA 1949 and TA 1984. This means that the definition does not apply to use of the word in relation to WT licences (section 1D(5) WTA 1949: power to refuse a WT licence where applicant does not provide the appropriate information) but does apply to the corresponding provision for grants of RSA. The order applies the CA 2003 definition to all references to "information" in WTA 1949 and Part 6 of TA 1984. Doing this might extend what has been understood as "information" in those contexts.

(d) "International obligations of the United Kingdom" is not defined in section 7(9) WTA 1967. The order applies the CA 2003 definition for the purposes of WTA 1967. Given the way that the term "international obligation of the United Kingdom" is defined in section 405 CA 2003 (that is, as including certain obligations), it is not considered that applying that definition to WTA 1967 would exclude an obligation now covered by the reference in section 7(9).

Paragraph 7 of the Schedule

6. A number of enactments contain provisions relating to the disclosure of information which allow information obtained under one Act to be used by Ministers and other government bodies for the purpose of carrying out certain governmental functions (generally a reference to functions under listed Acts and statutory instruments). Certain of these (for example, section 174(3) Water Act 1989 ("WA 1989")) provide for disclosure of information

in relation to TA 1984 and CA 2003, but not the other enactments being consolidated. Paragraph 7(1) and (2) of the Schedule to the Order modifies the references to TA 1984 and CA 2003 in section 174(3) WA 1989 (and the other provisions listed in paragraph 7(3)) so that the references to TA 1984 and CA 2003 are to those Acts with the exception of the provisions of those Acts that are repealed and re-enacted in the consolidation Bill. Paragraph 7(4) achieves the same effect, but takes a different approach since the legislation being modified (TA 1984) contains a reference to “CA 2003, excluding the provisions which are enactments relating to the management of the radio spectrum”.

7. If no provision were made in the Order, the consequential amendment of section 174 WA 1989 would be a new paragraph in subsection (3) listing only those provisions of the WT Bill that derive from TA 1984 or CA 2003. Such a consequential amendment would mean that section 174 would cover the provisions about making grants of RSA (CA 2003-derived) but not granting WT licences (WTA 1949-derived) and it would cover provisions about type approval and marking of apparatus (TA 1984-derived) but not use and sale of apparatus (WTA 1949- and WTA 1967-derived). The other enactments listed in paragraph 7(3) would be similarly affected. It is therefore considered desirable to remove these distinctions by treating all provisions in the WT Bill in the same way.

Paragraph 8 of the Schedule

8. The Secretary of State’s order- and regulation-making powers as re-enacted in the Bill are not consistent as regards whether they allow for different provision for different cases and different areas, whether they allow for exceptions and exemptions and whether they allow for the making of incidental, supplemental, saving or transitional provision. Sections 5 and 6 WTA 1949 do not elaborate on the provision that may be made by orders under those sections, although the power in section 6(2) WTA 1949 is modified by section 9(4) WTA 1967 so as to allow for different provision for different cases and for ships and aircraft registered in different countries. MBOA 1967 says nothing as regards the power to prescribe by order under section 2A(1). Section 84 TA 1984 is subject to section 104(2) TA 1984 which allows for different provision for different cases or descriptions of case. The other order- and regulation-making powers are subject to section 402(3) CA 2003 which allows for the variety of provision described in the first sentence of this paragraph.

9. The variety of the provision about the Secretary of State’s order- and regulation-making powers (described in paragraph 9 of this Annex) may be contrasted with the provision about OFCOM’s powers. All OFCOM’s order- and regulation-making powers re-enacted in the Bill are subject to section 403(7) CA 2003 which allows OFCOM to make the same variety of provision as is described in section 402(3) CA 2003. Further, the order-making power in section 84(7) TA 1984 is subject to different provision depending upon who exercises it: if OFCOM, it may contain the provision allowed by section 403(7), but if the Secretary of State, it may only contain the provision allowed by section 104(2) TA 1984. It is thought that little purpose is served by continuing to have different provision for the cases not subject to section 402(3) CA 2003. Paragraph 8 of the Schedule to the Order therefore enables provision like that allowed by section 402(3) to be made in the case of each order- or regulation-making power. Power to allow for different provision for ships and aircraft registered in different countries is preserved (see clause 50 of the WT Bill). It is considered that the effect of making provision like that in section 402(3) in relation to other powers will not result in a significant widening of the powers affected.

Paragraph 9 of the Schedule

10. Section 411(6) CA 2003 enables Her Majesty by Order in Council to extend the provisions of CA 2003 to the Isle of Man and the Channel Islands, with such modifications as

appear to her appropriate. Section 411(8) elaborates on the provision that may be made in the Order in Council by applying section 402(3) CA 2003. The corresponding provisions in the other Acts being consolidated do not allow the same degree of variety. For example, section 20(3) WTA 1949 and section 9(3) WTA 1998 allow for “adaptations and modifications”. It is thought little purpose is served by there being differences in the way that different provisions may be extended to the Islands. Paragraph 9 of the Schedule makes provision like that in section 411(8) CA 2003 in relation to the provisions corresponding to section 411(6) CA 2003 in the other Acts (i.e. the powers to make Orders in Council listed in that paragraph).