EXPLANATORY MEMORANDUM TO

THE WIRELESS TELEGRAPHY (FIXED PENALTY) REGULATIONS 2011

2011 No. 2084

1. This explanatory memorandum has been prepared by the Department of Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

Regulations to implement a scheme of fixed penalty notices (FPNs) for summary offences regarding the illegal use of radio spectrum, under the Wireless Telegraphy Act 2006 (WT Act 2006).

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

This is the first time that the Secretary of State has exercised this power.

4. Legislative Context

4.1 The purpose of these Regulations is to enable the Office of Communications (OFCOM) to issue FPNs of £100 in relation to relevant offences under section 96 of the WT Act 2006, and to which Schedule 4 applies.

4.2 Section 96 of and Schedule 4 to the WT Act 2006 set out the details for the FPN scheme and confer powers upon 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, and applies to less serious offences that can be tried only in a lower court without a jury.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom. OFCOM will be responsible for issuing FPNs in England, Wales and Northern Ireland. The Procurator Fiscal will be responsible for issuing FPNs in Scotland, when they are notified of an offence by OFCOM. For simplicity, the FPN issuing authority is referred to as OFCOM throughout this Explanatory Memorandum.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Communications Act 2003 imposes a duty on OFCOM to secure the optimal use of the radio spectrum. The WT Act 2006 regulates the use of radio

equipment. It provides for a number of criminal offences to enforce the regime, which is regulated by OFCOM. The purpose of the regime is to reduce interference between users, and maintain the most effective and efficient use of spectrum for the benefits of citizens and consumers. OFCOM also has a duty to provide assistance to persons complaining of interference with wireless telegraphy.

7.2 In order to lighten the touch of the regulatory regime, Section 96 of and Schedule 4 of the WT Act 2006 allows certain minor offences within the WT Act 2006 to be dealt with by way of an FPN rather than prosecution. This means that where an offender is issued with an FPN and pays the fee within a specified time, no proceedings in relation to that offence may be brought against the offender.

7.3 These Regulations set an FPN of £100 for summary only offences, other than those created within Part 4 of the Act. Typically, this would include operating transmitters without a licence where one is required, outside the conditions of a licence, or outside conditions that allow exemption from the need for a licence. Other relevant offences include unlawful interception/disclosure of messages and obstructing a person in the exercise of powers under the Act to enter and search premises and seize property. The Regulations do not however, apply to offences involving making a broadcast intended for general reception, or to any offences triable at a Crown Court.

7.4 Currently, minor breaches of the WT Act 2006 usually go unpunished, as prosecution is a costly and lengthy process, and it is often not in the public interest financially for OFCOM to pursue offenders in this way. An FPN scheme will allow OFCOM to penalise minor breaches, thus minimising interference to legal users, and ensuring efficient use of radio spectrum.

7.5 An effective deterrent system will also minimise disruption to radio communications at major events, and enable OFCOM to deal with offenders quickly and cost-effectively. In particular, OFCOM wishes to use the FPN scheme in the build up to the 2012 London Olympics, as this will enable OFCOM to tackle illegal radio use and 'cleanse' the radio spectrum in preparation for the event. Enforcing compliance will ensure spectrum use is better planned with less risk of interference to broadcasters and other radio users attending the Games.

8. Consultation outcome

8.1 A consultation was carried out in December 2005, which contained a Regulatory Impact Assessment, and received 26 responses, the majority of which were supportive of the proposed Regulations. The Government Response to the consultation was published in 2006.

8.2 The majority of respondents to the consultation supported the penalty level of £100 as appropriate and proportionate. The majority of those opposed considered that £100 was too low. However, the Government believes that the FPN level of £100 is appropriate, as there needs to be a balance between on the one hand setting a fixed penalty level so high that encourages the defendant to contest the matter in court, and on the other setting it so low as to be seen as derisory.

8.3 Although the Government last consulted on these proposals in December 2005, there have been no major changes to the proposals since then, and further consultation was not considered necessary. Both the fixed penalty amount of £100 and the type of minor offences for which FPNs can be issued remain unchanged.

9. Guidance

Guidance will be available on the OFCOM website at www.ofcom.org.uk.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies, unless they use radio illegally. No new regulation is being created – the FPN scheme is designed to provide a more proportionate enforcement regime for existing offences.

10.2 The impact on the public sector is also limited, in that there will be minor costs to OFCOM, the Ministry of Justice and the Procurator Fiscal in the implementation and administration of FPNs. However, these costs should be offset by an overall reduction in administration and court time.

10.3 The Better Regulation Executive have determined that a further impact assessment is not necessary, as the cost of these measures falls below the £5 million threshold, a formal publication of an impact assessment is not required, neither is Regulatory Policy Committee clearance.

11. Regulating small business

The legislation applies to small business. In the 2005 consultation, it was confirmed that the FPN scheme did not disproportionately affect small firms who use radio and have radio licences. This was confirmed by consultations with the Small Business Service and relevant trade representatives of small firms who use radio in the course of their business. As nothing material has changed since then, it is still considered that the impact on small firms will be negligible. There will be no impact on small business unless they use radio illegally and there are no new requirements being imposed. OFCOM intends to deal with unintentional breaches by small firms by issuing Conformity Notices, before proceeding to an FPN.

12. Monitoring & review

OFCOM will monitor the FPN scheme. In 2014, DCMS will assess the data collected by OFCOME and review how successful the Regulations are, including reviewing the level of penalty, the range of summary offences that are subject to FPNs, and users affected by FPNs.

13. Contact

Any queries regarding this instrument can be answered by James Youngs at the Department for Culture, Media and Sport Tel: 0207 211 6389 or email: James.Youngs@culture.gsi.gov.uk