



Statement on the making of
(1) spectrum trading regulations
and (2) register regulations in
connection with the award of
800 MHz and 2.6 GHz

Statement

Publication date:

19 March 2013

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Section 1

Summary

- 1.1 This statement sets out our decisions in relation to two statutory instruments we need to make in connection with the award of wireless telegraphy licences for the use of equipment operating within the following spectrum bands 791-821 MHz, 832-862 MHz and 2500-2690 MHz (“the Bands”).
- 1.2 On 24 January 2013 we published a Notice in respect of our proposals to make (1) spectrum trading regulations and (2) register regulations in connection with the Bands.
- 1.3 We have carefully considered the response that has been made to the Notice and have now made the two statutory instruments and submitted them for registration and publication. They will come into force on 5 April 2013.

Section 2

Introduction

- 2.1 This Statement sets out Ofcom's decisions in relation to two statutory instruments it needs to make in connection with the award of wireless telegraphy licences for the use of the spectrum bands 791-821 MHz, 832-862 MHz and 2500-2690 MHz ("the Bands").
- 2.2 On 24 January 2013 we published a notice of our proposals to make regulations ("the January 2013 Consultation") in respect of spectrum trading and also amendment to the wireless telegraphy register. The Notice contained draft regulations and invited comments on these by 25 February 2013.
- 2.3 The draft statutory instruments published for consultation in January 2013 followed a statement 'Assessment of future mobile completion and award of 800 MHz and 2.6 GHz' ("the July Statement") published on 24 July 2012. In this statement Ofcom set out its policy decisions on the trading of the licences to be granted under the award regulations. That decision and the reasons for it are set out in the July Statement.

Responses to the January 2013 consultation

- 2.4 We received one non-confidential response to the January 2013 consultation. We considered the above submission carefully before making our decisions and it is discussed in Section 3 below.

Making and publication of the final regulations in connection with the award

- 2.5 Having considered the response to the consultation we decided to make the two statutory instruments on 18 March 2013. These are available on the www.legislation.gov.uk website. Copies in draft form are also annexed to this statement for indicative purposes in the form submitted for registration and publication after their making by Ofcom. www.legislation.gov.uk is the only authorised source for published statutory instruments.

Document structure

- 2.6 Section 3 of this Statement provides further details of our decisions following the January 2013 consultation.
- 2.7 Section 4 contains copies of the Regulatory Impact Assessments for the two statutory instruments in the form placed in the libraries of both Houses of Parliament.
- 2.8 Annex 1 contains draft copies of the two statutory instruments in the form submitted for registration and publication after they were made.

Section 3

Ofcom's decisions

- 3.1 In the January 2013 Consultation we gave notice of, and consulted on, our proposals to make regulations in connection with mobile spectrum trading and the amendment of the wireless telegraphy register.
- 3.2 The proposals included two statutory instruments, which can be briefly summarised as follows:
- The Wireless Telegraphy (Mobile Spectrum Trading) Regulations (the "Trading Regulations") provide the scope for subsequent transfers of licences in the Bands, as described in the January 2013 consultation.
 - The Wireless Telegraphy (Register)(Amendment) Regulations (the "Register Regulations") set out the provisions necessary to allow the publication of details of the licences for use of the Bands in the wireless telegraphy register.

Responses to the January 2013 consultation

- 3.3 A non confidential response was received from Hutchison 3G UK (H3G). In general they supported Ofcom's proposals to make licences for the Bands tradeable. H3G noted that no timetable for Ofcom's spectrum trading process (including the competition assessment) was included in the proposed mobile spectrum trading regulations. Whilst Ofcom had published Trading Guidance Notes (OfW513) in December 2011, to assist with business planning some degree of certainty regarding the likely timetable and process for Ofcom to carry out its assessment of a potential trade of 800 MHz or 2.6 GHz spectrum was needed.
- 3.4 Ofcom produced Trading Guidance Notes¹ (OfT513) in December 2011. These guidance notes provide a guide to spectrum trading and Ofcom's spectrum trading processes. They include details of the process for Public Wireless Network (PWN) licences and in particular the process and estimated timescales for assessing competition issues for PWN licences. We can confirm that the trading process and estimated timescales for PWN licences set out in the Trading Guidance Notes (OfT513) of December 2011 will apply to the Spectrum Access licences awarded in the Bands.
- 3.5 H3G supported Ofcom's proposed Wireless Telegraphy (Register)(Amendment) Regulations.

Changes made to the drafting of the regulations

- 3.6 The January 2013 consultation proposed new standalone mobile spectrum trading regulations as the auction process for the 2500-2690 MHz frequencies included the potential for low power licences to be awarded at 2.6 GHz. These low power licences would have required restrictions to the types of trade permitted in order to ensure that that one licensee could not unilaterally increase the number of parties with whom

¹ <http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-trading/tradingguide.pdf>

other licensees would have had to coordinate. The need to make specific provision for the rules applying to trades of low power rights and obligations meant that it would be clearer, in terms of drafting, to have a separate standalone set of mobile trading regulations for the Spectrum Access licences at 2500-2690 MHz frequencies rather than amend the existing mobile spectrum trading regulations applying to Public Wireless Network licences².

- 3.7 However, following the conclusion of the auction no 2500-2690 MHz low power licences have been awarded. The need for standalone mobile spectrum trading regulations has fallen away. We have therefore made the Wireless Telegraphy (Mobile Spectrum Trading)(Amendment) Regulations 2013 to amend the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “Principal Regulations”). These Principal Regulations authorise the transfers of rights and obligations arising under wireless telegraphy licences in the Public Wireless Network licence class which authorise the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the schedule to the Principal Regulations, and set out the process for effecting such transfers.
- 3.8 Regulation 2 amends the Principal Regulations so as to extend the application of the Principal Regulations to licences in the Spectrum Access licence class for frequencies in specified frequency bands.

² The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011.

Section 4

Regulatory Impact Assessments

Wireless Telegraphy (Mobile Spectrum Trading)(Amendment) Regulations 2013

Introduction

- 4.1 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”) following Ofcom’s notice of proposals to make the Regulations³, published on 24 January 2013 (the “Notice”).
- 4.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Proposal, purpose and intended effect

- 4.3 Following the statement published on 24 July 2012⁴ (the “July Statement”) on the assessment of future mobile competition and award of 800 MHz and 2.6 GHz, Ofcom has awarded licences for the use of the frequencies by means of an auction.
- 4.4 This RIA for the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2013 relates to the grant of licences for the use of the frequency bands 791-821 MHz, 832-862 MHz and 2500-2690 MHz (the “Bands”) The purpose of these regulations is to permit the transfer of rights and obligations relating to wireless telegraphy licences for frequencies in the Bands, also known as spectrum trading.
- 4.5 In the July Statement, Ofcom set out its decision that all types of transfer should be allowed in the Bands, i.e. outright total transfers, concurrent total transfers, outright partial transfers and concurrent partial transfers.
- 4.6 This decision has been given effect by the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2013, by amending the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 so that they apply to the transfer of rights and obligations relating to wireless telegraphy licences for frequencies in the Bands.

Costs to Ofcom and the public sector

- 4.7 There are one-off administrative costs associated with making Statutory Instruments. We consider these implementation costs to be low. Ofcom would incur little additional cost as a result of this proposal. The framework for spectrum trading has already

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum-trading-regs-jan13/summary/spectrum-trading-regs-jan13.pdf>

⁴ <http://stakeholders.ofcom.org.uk/consultations/award-800mhz-2.6ghz/>

been set up and including the wireless telegraphy licences in the Bands within the framework should require little additional cost.

Cost to business, including small business and the voluntary sector

- 4.8 The business sector most likely to be affected is the mobile communications service provision sector. The types of service most likely to be provided using this spectrum are high speed mobile broadband services.
- 4.9 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment for the Spectrum Trading and Wireless Register Regulations 2004, published in December 2004. It concluded that the likely benefits of spectrum trading generally outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded and for whom the benefit of the spectrum trade should exceed the costs anyway. This analysis of the general benefits of introducing spectrum trading should also apply to the wireless telegraphy licences in the Bands.
- 4.10 On 20 June 2011, Ofcom published a statement of its decision on the proposals to make the licences for 900, 1800 MHz and 2.1 GHz spectrum tradable⁵ (the June 2011 Statement). This statement included a RIA in respect of the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011, which gave effect to the decision. As set out in the July Statement, Ofcom considers that the same considerations apply to licences for the 800 MHz and 2.6 GHz spectrum since that spectrum will be used to provide the same or similar services to those provided using the 900 MHz, 1800 MHz and 2.1 GHz bands. Accordingly, the analysis in the RIA for the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 applies equally to the present Regulations.
- 4.11 In summary, Ofcom considers that the benefits of allowing trading for wireless telegraphy licences in the Bands are likely to substantially outweigh the costs.
- 4.12 We do not consider that our decision to make these regulations will have any material cost implications for the voluntary sector.

Conclusion

- 4.13 Ofcom has assessed the impact of allowing spectrum trading in the Bands and has found that the costs are not likely to outweigh the benefits for all types of transfer.

⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/trading-900-1800-2100/statement/900-1800-2100-statement.pdf>

The Wireless Telegraphy (Register)(Amendment) Regulations 2013

Introduction

- 4.14 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”) following Ofcom’s notice of proposals to make the Regulations⁶, published on 24 January 2013 (the “Notice”).
- 4.15 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Proposal, purpose and intended effect

- 4.16 Following the statement published on 24 July 2012⁷ (the “July Statement”) on the assessment of future mobile competition and award of 800 MHz and 2.6 GHz, Ofcom has awarded licences for the use of these frequencies by means of an auction.
- 4.17 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences – the Wireless Telegraphy Register.
- 4.18 The Regulations to which this RIA relates would enable information about the Licences in the available spectrum 791-821 MHz, 832-862 MHz and 2500-2690 MHz (the “Bands”) to be published in the Wireless Telegraphy Register. In doing so this should facilitate spectrum trading by, except where security considerations prevent publication of information, providing information which will enable potential buyers to find out who holds what frequencies and the constraints on the use of specific frequencies for bands.

Costs to Ofcom and the public sector

- 4.19 Ofcom carried out a RIA for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register⁸. Those regulations were subsequently amended on several occasions, and were replaced in 2012 with a consolidating set of regulations - the Wireless Telegraphy (Register) Regulations 2012 - for which Ofcom also carried out a RIA (published September 2012)⁹.
- 4.20 The regulations which are the subject of this RIA (the Wireless Telegraphy (Register) (Amendment) Regulations 2013) have the effect of amending the Wireless Telegraphy (Register) Regulations 2012 by adding the Bands to the Schedule of the 2012 Regulations. The conclusions of the RIA for the Wireless Telegraphy (Register)

⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum-trading-regs-jan13/summary/spectrum-trading-regs-jan13.pdf>

⁷ <http://stakeholders.ofcom.org.uk/consultations/award-800mhz-2.6ghz/statement/>

⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/spt_wtr/statement/stwtr.pdf

⁹ http://stakeholders.ofcom.org.uk/binaries/consultations/wireless-telegraphy-trading/statement/TradingRegister_statement.pdf

Regulations 2004 and the RIA for the Wireless Telegraphy (Register) Regulations 2012 on the costs and benefits of establishing a register also apply to these regulations. In summary, those conclusions were that the benefits of having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the Wireless Telegraphy (Register) (Amendment) Regulations 2013 will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and would be limited to updating the register for the wireless telegraphy licences in the Bands. The RIA for the Wireless Telegraphy (Register) Regulations 2004 also noted that if a register were not established, there would be a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher and that commercial providers might not bring the same benefits as an independent register.

- 4.21 Moreover, now that the register has been set up, the additional costs of including the Bands within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Cost to business, including small business and the voluntary sector

- 4.22 The business sector most likely to be affected is the mobile communications service provision sector. The types of service most likely to be provided using this spectrum are high speed mobile broadband services.
- 4.23 We do not consider that our decision to make these regulations will have any material costs implications for business or the voluntary sector.

Conclusion

- 4.24 Ofcom's assessment is that the benefits of including the Bands within the Wireless Telegraphy Act Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.

Annex 1

Draft statutory instruments

4.25 This annex includes a copy of the statutory instruments as made by Ofcom on 18 March 2013 and in the form submitted for registration and publication. These are marked as draft because www.legislation.gov.uk is the only authorised source for published statutory instruments.

4.26 The statutory instruments are:

- The Wireless Telegraphy (Mobile Spectrum Trading)(Amendment) Regulations 2013
- The Wireless Telegraphy (Register)(Amendment) Regulations 2013.

2013 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Mobile Spectrum Trading)
(Amendment) Regulations 2013**

Made - - - - *18th March 2013*

Coming into force - - *5th April 2013*

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006^(a) (the “Act”), make the following Regulations.

Before making the Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2013 and shall come into force on 5th April 2013.

Amendment of the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011

2.—(1) The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011^(b) are amended in accordance with the following provisions of this regulation.

(2) In regulation 4(3), after the words “Paragraph (1) shall apply to wireless telegraphy licences” delete the words to the end and insert “which are within one of the licence classes listed in Column 1 of the Schedule and which authorise the operation of a wireless telegraphy station or wireless telegraphy apparatus on frequencies in any of the frequency bands listed in Column 2 of the Schedule.”

(3) In regulation 5(a)—

- (a) in sub-paragraph (i), after the words “under a wireless telegraphy licence” delete the words to the end and insert “which is within one of the licence classes listed in Column 1 of the Schedule and which authorises the operation of a wireless telegraphy station or wireless telegraphy apparatus on frequencies in any of the frequency bands listed in Column 2 of the Schedule;”; and
- (b) in sub-paragraph (ii), after the words “under a wireless telegraphy licence” delete the words to the end and insert “which is within one of the licence classes listed in Column 1 of the Schedule and which authorises the operation of a wireless telegraphy station or

(a) 2006 c.36.
(b) S.I. 2011/1507.

wireless telegraphy apparatus on frequencies in any of the frequency bands listed in Column 2 of the Schedule; or”.

(4) For the Schedule substitute—

“SCHEDULE

Regulations 4 and 5

Licence classes and frequency bands

<i>Column 1</i>	<i>Column 2</i>
<i>Licence classes</i>	<i>Frequency bands</i>
Public Wireless Network	791-821 MHz
Spectrum Access	832-862 MHz
	880-915 MHz
	925-960 MHz
	1710-1781.7 MHz
	1805-1876.7 MHz
	1899.9-1980 MHz
	2110-2170 MHz
	2500-2690 MHz”

Ed Richards

Chief Executive of the Office of Communications
For and by the authority of the Office of Communications

18th March 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (S.I. 2011/1507) (“the Principal Regulations”).

The Principal Regulations authorise the transfers of rights and obligations arising under wireless telegraphy licences in the Public Wireless Network licence class which authorise the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the schedule to the Principal Regulations, and set out the process for effecting such transfers.

Regulation 2 amends the Principal Regulations so as to extend the application of the Principal Regulations to licences in the Spectrum Access licence class for frequencies in specified frequency bands.

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) and on the OFCOM internet website at www.ofcom.org.uk. Copies of the report have also been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

2013 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Register) (Amendment)
Regulations 2013**

Made - - - - *18th March 2013*

Coming into force - - *5th April 2013*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the Act”).

Before making the Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) Regulations 2013 and shall come into force on 5th April 2013.

Amendment of the Wireless Telegraphy (Register) Regulations 2012

2. Part 2 of Schedule 2 to the Wireless Telegraphy (Register) Regulations 2012(b) is amended by—

- (a) inserting in Column 2 after “758-766 MHz”—
“791-821 MHz
832-862 MHz”;
- (b) inserting in Column 2 after “1785-1805 MHz”—
“2500-2690 MHz”.

18th March 2013

Ed Richards
Chief Executive of the Office of Communications
For and by authority of the Office of Communications

(a) 2006 c. 36.
(b) S.I. 2012/2186.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Register) Regulations 2012 (S.I. 2012/2186) (the “Principal Regulations”).

The Principal Regulations require OFCOM to establish and maintain a public register of relevant information relating to wireless telegraphy licences of certain classes which apply to a station or apparatus operating within the frequency bands specified in the Schedule to the Principal Regulations.

Regulation 2 of these Regulations amends the Principal Regulations by adding the specified frequency bands to Schedule 2 to the Principal Regulations.

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7980 3000) and on the OFCOM internet website at www.ofcom.org.uk. Copies of the report have also been placed in the libraries of both Houses of Parliament.