



Extending spectrum transfer to the maritime and satellite earth station sectors

Consultation

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Section 1

Executive Summary

- 1.1 This document sets out our proposals to extend spectrum trading to the Maritime and Satellite Earth Station sectors. Spectrum trading enables a licensee to buy or sell all or part of their rights to use spectrum through a transfer of these rights under the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (the '2004 Trading Regulations').
- 1.2 The extension of trading to these sectors is the next step in our programme to roll out the ability to trade across our licence products. Since spectrum trading was introduced in 2004 for Fixed Links and some Business Radio licence classes, approximately 90,000 licences can now be transferred.
- 1.3 The specific WT Act licence products to which we propose to extend the ability to transfer are:
 - Coastal Station Radio (International);
 - Coastal Station Radio (UK);
 - Coastal Station Radio (International) Area Defined;
 - Coastal Station Radio (UK) Area Defined;
 - Coastal Station Radio (Marina);
 - Coastal Station Radio (Training School);
 - Differential Global Positioning System (DGPS);
 - Maritime Radio (Suppliers and Demonstration)
 - Permanent Earth Station (PES);
 - Transportable Earth Station (TES);
 - Satellite (Earth Station Network);
 - Satellite (Earth Station) (Non-Fixed Satellite Service); and
 - Satellite (Earth Station) (Non-Geostationary).
- 1.4 Our proposals will support a range of different types of transfer for these licences including the ability to transfer parts of their spectrum and, for certain licence products, by allowing the partial transfers of geographical areas. Such changes allow licensees the flexibility to transfer unused elements of their spectrum to those who might wish to make use of it.
- 1.5 It is important to note that although these proposals introduce the ability for licensees to transfer all or part of their WT Act licences there is no compulsion to do so. Spectrum trading is not mandatory and has no impact on licensees (or their current licence terms) who do not wish to engage in it.

- 1.6 The analysis presented in this document represents an Impact Assessment, as defined in section 7 of the Comms Act. Further copies may be obtained from www.ofcom.org.uk or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA. Comments on the proposals outlined in this document are invited by **5pm 10 February 2012**. We expect to release a Statement on this consultation by March 2012, having taken into account stakeholder responses to our proposals.

Section 2

Introduction

What is spectrum trading

- 2.1 Ofcom carries out its spectrum management functions within the framework of the general duties set out in section 3 of the Communications Act 2003 (the 'Comms Act') to further the interests of:
- citizens in relation to communications matters; and
 - consumers in relevant markets, where appropriate by promoting competition.
- 2.2 This includes having regard to choice, price, quality and value for money. Radio spectrum is a finite resource and Ofcom has a duty under the Comms Act to ensure its optimal use in order to further the interests of citizens and consumers. We believe that this is generally best achieved through a market-based approach to spectrum management. Trading (both transfer and leasing), liberalisation and the administrative incentive pricing (AIP) of spectrum are key mechanisms of this approach.
- 2.3 The ability to trade a Wireless Telegraphy Act 2006 (the 'WT Act') licence helps promote innovation and growth by opening up opportunities for businesses to gain access to the radio frequencies where demand has outstripped supply. Trading provides a mechanism for spectrum to migrate to those that can generate greater benefits for citizens and consumers and securing maximum benefit for society from the radio spectrum. Around 3% of UK GDP relies on having access to spectrum and is worth over £40bn a year to the economy¹.
- 2.4 Spectrum trading has two forms that allow the holders of certain wireless telegraphy licences granted under section 8 of the WT Act to either:
- i) transfer all or part of their licence rights and associated obligations to another party under the provisions of the 2004 Trading Regulations ('transfer'). This involves notifying Ofcom and the issue of a new licence to the transferee; or
 - ii) let someone else exercise the licence-holder's rights to use the spectrum within and subject to the terms and conditions of the licence ('leasing'). This is achieved on a purely contractual basis and transactions proceed without Ofcom involvement.
- 2.5 Ofcom will introduce leasing for the first time later this month (December 2011), initially for certain auctioned and Business Radio licences². However, the proposals in this document for the Maritime and Satellite Earth Station sectors relate only to the ability to transfer a licence under the provisions of the 2004 Trading Regulations and not to leasing. Accordingly, where we use the high level term "spectrum trading" in

¹ 'Economic impact of the use of radio spectrum in the UK' by Europe Economics at:

http://stakeholders.ofcom.org.uk/binaries/research/spectrum-research/economic_impact.pdf

² More information concerning provisions for leasing are outlined in our statement "Simplifying Spectrum Trading" published on 29 June 2011, available at

<http://stakeholders.ofcom.org.uk/binaries/consultations/simplify/statement/statement-spectrum-leasing.pdf>

the rest of this document, we are referring specifically to the intention to permit the **transfer** (not lease) of WT Act licences.

- 2.6 Since we introduced spectrum trading in 2004 we have extended trading across the full range of Business Radio, Fixed Link and Broadband Wireless Access licences. This year, we have also made the 900, 1800 and 2100MHz mobile licences tradable. This extension to the Maritime and Satellite Earth Station areas is the next logical step in our programme.
- 2.7 Spectrum trading is not mandatory and will have no impact upon those licensees who do not wish to trade their licence(s).

Why is trading permitted

- 2.8 Our primary duty is to further the interests of citizens and consumers. In so doing, we are required to secure in particular a number of objectives including optimal use of the spectrum. The proposals in this document will enable new market entrants to acquire spectrum more quickly than if they had to wait for us to make it available. Consumers will benefit from the resulting faster availability of new services and the effects of additional competition, including greater choice and lower prices.
- 2.9 Ofcom believes that the ability to transfer a WT Act licence promotes innovation and growth by opening up opportunities for businesses to gain access to radio frequencies. In time it should help address the problem of bandwidth scarcity in certain parts of the radio frequency spectrum, increasing competition and, for example, help to reduce any inequity from spectrum allocated on a first come first served basis. Further analysis of the costs and benefits of implementing the policy of spectrum trading can be found in the Impact Assessment of the 2004 Trading Regulations³.
- 2.10 The proposals in this document are intended to maximise the value created by the use of radio spectrum by extending opportunities to transfer a WT Act licence. Ofcom's Spectrum Framework Review (SFR)⁴ concluded that spectrum is managed most effectively if the market is allowed greater influence over how spectrum is used. Spectrum trading (both transfers and leasing) allows spectrum to be transferred through the market to those that can generate the greatest benefits for society and so helps secure optimal use of the limited and valuable spectrum resource.
- 2.11 The benefits of trading are strongly amplified if also linked to liberalisation. Although we have no plans at present to liberalise the licence classes outlined in this document, our general stance is to liberalise where possible (taking account of relevant factors such as international constraints and interference risk). We will be reviewing the restrictions that apply to these licence classes, along with others, as required by section 9ZB of the WT Act by 26 May 2016.

Types of transfer

- 2.12 The 2004 Trading Regulations set out the types of transfers that are permitted for each licence class and the procedure to be followed in executing them. The framework permits various different types of transfers:

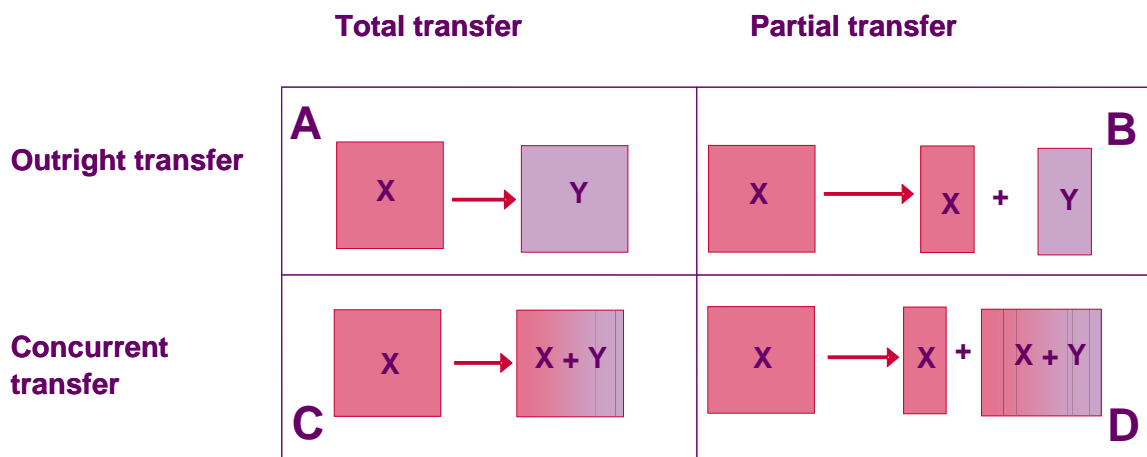
³ http://stakeholders.ofcom.org.uk/binaries/consultations/spt_wtr/statement/stwtr.pdf

⁴ <http://www.ofcom.org.uk/consult/condocs/sfr/>

- Outright total transfers – all the rights and obligations under a licence are transferred to a third party;
- Outright partial transfers – only some of the rights or obligations are transferred to a third party and the rest remain with the original owner;
- Concurrent total transfers – all the licence rights and obligations are transferred to a third party while continuing at the same time to apply also to the original holder; and
- Concurrent partial transfers – some of the licence rights and obligations are transferred to a third party while continuing at the same time to apply to the original holder and the rest of the rights and obligations remain with the original holder.

2.13 Outright or concurrent transfers may be either total or partial as illustrated in Figure 1 below, which illustrates the four possible combinations.

Figure 1: Types of permitted transfers



Outright transfer

2.14 With an outright transfer, the rights and obligations of the person making the transfer become the rights and obligations of the transferee. After such a transfer, the original licence holder (that transferred the licence) no longer has any rights and/or obligations under the licence. This is often the case when one company takes over another company.

Concurrent transfer

2.15 Unlike outright transfers, with a concurrent transfer the transferred rights and obligations become the rights and obligations of all parties, both the original licensee and the new one. Such a transfer enables licensees to share rights to use spectrum. The number of concurrent licence holders is not limited in the regulations, and so joint holdings by three or more licensees might be possible. Where a licence is held concurrently by a number of licensees, the consent of all those licensees will be necessary to complete a subsequent transfer. Additionally, under such a holding all licensees will be responsible for complying with licence obligations, including the

obligation to pay the licence fee. Concurrent trades sometimes occur when companies enter a joint venture but still wish to remain separate legal entities.

Partial transfer

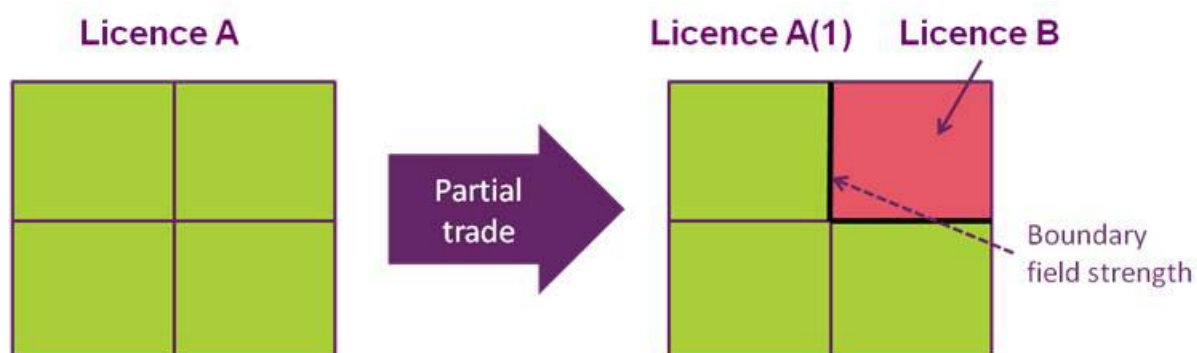
2.16 For certain licence classes we permit the licensee to transfer part of their WT Act licence. This provides an opportunity for the licensee to retain the spectrum that they still require and sell any unwanted authorisations to a third party. This could be a geographical area, frequency band/channel or an individual station/assignment. More information on the types of partial transfer is listed below.

Geographical segmentation

2.17 For some licence classes Ofcom allows the geographical partitioning of the licence. This enables licensees to transfer part of the geographical area in which they are currently entitled to operate to a third party. For example, a licensee with a licence for the whole of the UK could transfer that part of their licence that permitted operation in Scotland. This would create two new licences, one covering England, Wales and Northern Ireland, held by the original licensee, and one for Scotland held by the transferee.

2.18 Figure 2 demonstrates this concept. In this example a licence, A, made up four trading units is partially transferred to form two new licences A(1) and B. At, and beyond, the boundary between A(1) and B the boundary field strength must be adhered to.

Figure 2: A geographical partial transfer using trading units



Spectrum segmentation

2.19 For some licences classes we permit the spectrum segmentation of the licence. This allows licensees to transfer part of the spectrum frequency in which they are currently authorised to operate to a third party. For example, a licensee with a licence for a 25 kHz channel could partially transfer 12.5 kHz of their assignment. This would create two new licences of 12.5 kHz held by the original licensee, and one for the transferee. The minimum level of spectrum segmentation, depending on the licence class, is 6.25 kHz. Figure 3 demonstrates this concept for example; that a 12.5 kHz channel could be segmented into two 6.25 kHz channels or a 25 kHz channel could be segmented into one 12.5 kHz and two 6.25 kHz channels.

Figure 3: Levels of spectrum segmentation that can be supported



Transfer of assignments/stations

2.20 Some licences contain more than one authorised assignment/station on the same licence, for example a single licence may contain authorisations for three different locations. Where such licences occur, we permit the licensee to transfer all of the rights and obligations of an individual assignment/station to a third party (similar to a total transfer).

Impact assessment

2.21 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Comms Act. Impact assessments 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. This is reflected in section 7 of the Comms Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public or when there is a major change in our activities. However, as a matter of policy, we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines “Better policy-making: Ofcom’s approach to impact assessment”⁵.

Equality Impact Assessment

2.22 Following an initial assessment of our policy proposals we considered that it was reasonable to assume that any impacts on consumers and citizens arising from the proposals in this document would not differ significantly between groups or classes of UK consumers and citizens, all of whom would have access to these services, potentially at end-user prices reflective of all general input costs, including opportunity costs of spectrum used.

⁵ http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

- 2.23 We do not consider that there is evidence to suggest that costs imposed on stakeholders, would differ significantly by these aforementioned groups of consumers and citizens relative to consumers in general. This is because one would not expect the impact of supplying these consumers and citizens to differ significantly between these groups and consumers in general.
- 2.24 Therefore we have not carried out a full Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality schemes. This was because we were not aware that our decision was intended (or would, in practice) have a significant differential impact on different gender or racial groups, on consumers in Northern Ireland or on disabled consumers compared to consumers in general.

Structure of this document

- 2.25 The rest of this document is structured as follows:
- Section 3 sets out the legal framework that permits transfers. In addition it also provides information on the basic steps involved in transferring a WT Act Licence.
 - Section 4 details our proposals to make certain maritime and satellite WT Act licences transferable and the types of transfer that would be permitted for each licence.
 - Section 5 sets out the next steps for this consultation.
 - Annexes 1 to 3 outline how to respond to this consultation and the principles that Ofcom will follow.
 - Annex 4 lists the consultation questions.

Section 3

Legal framework

- 3.1 Spectrum trading (both transfer and leasing) is permitted and governed in the European Union (EU) by Article 9b of the Framework Directive (2002/21/EC as revised by Directive 2009/140/EC)⁶. This requires that:
- i) transfers are notified to the national regulatory authority and carried out in accordance with procedures laid down by it;
 - ii) intended and effective transfers are made public; and
 - iii) competition is not distorted as a result of any transfer or accumulation of spectrum rights (article 5.6 of the revised Authorisation Directive).
- 3.2 The Framework Directive was transposed into UK law via section 168 of the Comms Act. This enabled the introduction of spectrum transfers in the UK. Section 168 was superseded without amendment by section 30 of the WT Act, under which trading is now authorised and regulated.
- 3.3 The 2004 Trading Regulations made transfers possible by detailing the possible transfer types, initial permitted licence classes and procedures that need to be followed. These regulations have been subsequently amended a number of times to reference additional licence classes as we have rolled out spectrum transfers to further licence classes.
- 3.4 The 2004 Trading Regulations do not extend to Guernsey. In addition, they cannot extend to Jersey or the Isle of Man because there has not been an Order in Council which extends the application of the Comms Act to these places. Hence the plans for transfers contained in this consultation will not apply to Guernsey, Jersey or the Isle of Man.
- 3.5 Regulations 8, 9 and 10 of the 2004 Trading Regulations set out the transfer procedure. Section 8(4) of the 2004 Trading Regulations requires Ofcom to notify the parties of the transfer, and section 8(5) sets out how the trade will be affected.

Transfer process

- 3.6 As outlined above, the 2004 Trading Regulations detail the procedures that must be followed in order to transfer a licence. The basic steps involved in the spectrum transfer process are as follows:
- Licence holder submits the appropriate transfer application form signed by the transferee and transferor;
 - Ofcom assesses the information provided on the form and considers whether it requires further information in order to be able to consent to the transfer;
 - We publish a notice setting out basic details of the proposed transfer on the Transfer Notification Register (TNR);

⁶ http://ec.europa.eu/information_society/policy/ecomms/doc/library/regframeforec_dec2009.pdf

- We check that none of the circumstances under which transfers are not authorised apply;
- We consider and determine whether or not to consent to the trade⁷;
- We inform the parties to the transfer of our decision on consent, if a trade is refused we will make clear the grounds on which we have withheld consent;
- If agreed, the parties and Ofcom put the transfer into effect by the licence holder surrendering the original copy of his licence to us and Ofcom issuing a new licences that confer exactly the same rights and obligations to either the transferee or, in the case of a partial trade, to both parties; and
- The status of the transfer is updated in the TNR.

3.7 Further information can be found in the Trading Guidance Notes published on the Ofcom website⁸.

⁷ Following consultation, we announced the intention in our June 2011 statement on *Simplifying Spectrum Trading* to take an early opportunity to remove this step of the process for most licence classes. This change is likely to be implemented at the same time as the proposals in this document if we decide following this consultation to proceed with them.

⁸ Available at <http://stakeholders.ofcom.org.uk/spectrum/spectrum-trading/trading-guidance-notes/>

Section 4

Proposals

Introduction

4.1 This section describes in more detail the types of transfer that we will permit for maritime and satellite earth station licences. As stated in section 2 we permit three main types of transfer. Not all types of transfer will be permitted for all licence classes. Information on the types of transfers permitted in the maritime sector is described in Table 1 and Table 2 for the satellite earth station sector.

Maritime proposals

4.2 We are proposing to extend the ability to transfer all or part of a WT Act licence to the maritime licences listed in Table 1.

Table 1: List of proposed tradable licence classes and permitted types of transfer

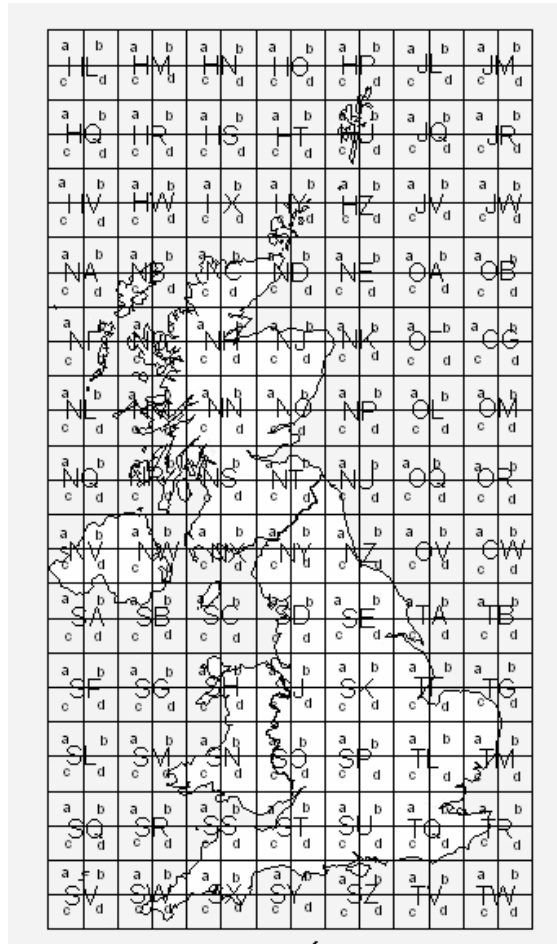
Licence class	Types of transfer
Coastal Station Radio (International)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Coastal Station Radio (UK)	Outright Concurrent Partial transfer - Spectrum segmentation to a minimum channel width of 6.25 kHz (subject to clearance by Ofcom and prior licence variation). Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Coastal Station Radio (International) Area Defined	Outright Concurrent Partial transfer - Geographical segmentation possible down to a minimum trading unit (50 km grid square). Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Coastal Station Radio (UK) Area Defined	Outright Concurrent Partial transfer - Spectrum segmentation to a minimum

	<p>channel width of 6.25 kHz (subject to clearance by Ofcom and prior licence variation).</p> <p>Partial transfer - Geographical segmentation possible down to a minimum trading unit (50 km grid square).</p> <p>Partial transfer - Transfers of individual assignments where licence covers more than one assignment.</p>
Coastal Station Radio (Marina)	<p>Outright</p> <p>Concurrent</p>
Coastal Station Radio (Training School)	<p>Outright</p> <p>Concurrent</p>
DGPS	<p>Outright</p> <p>Concurrent</p>
Maritime Radio (Suppliers and Demonstration)	<p>Outright</p> <p>Concurrent</p>

- 4.3 Coastal Station Radio (UK) and Coastal Station Radio (UK) Area Defined licensees will be able to transfer part of their frequencies to a minimum of 6.25 kHz within existing channel plans. This will enable those stakeholders that no longer require the full 25 kHz allocation, as they may have moved to digital technologies that are more spectrally efficient, to potentially transfer it to a third party.
- 4.4 To approve the transfer we would require that the licensee submit the proposal to Ofcom so that we can first check any risk of increased interference and manage coexistence between different channel spacings. This will be carried out by the licensee submitting a licence variation request before we can consent to the partition. It might be necessary to refuse the variation request or to make a completely new assignment in order to facilitate the partitioning if the proposed segmentation would cause interference to other licensees.
- 4.5 This can be illustrated by an example. In the case of a Coastal Station Radio (UK) licence with a 1 x 12.5 kHz channel assignment, a licensee wishing to undertake a partial transfer would first apply through the licence variation process to segment the assignment into 2 x 6.25 kHz channel assignments. Ofcom will then assess the interference risk and, if satisfied, grant the licensee a revised licence with two 6.25 kHz assignments. The licensee could then trade these via the partial transfer procedure.
- 4.6 Spectrum segmentation will not be permitted for Coastal Station Radio (International) and Coastal Station Radio (International) Area Defined licences. This is because of the 25 kHz channel restrictions placed on the frequencies as set out in the Radio Regulations. We are working with the international community to see if other bandwidths could be made available. If agreement is reached we will revise our proposals or update our regulations accordingly.

- 4.7 Geographical segmentation will be possible down to a minimum transfer unit (50 km grid square) for both Coastal Station Radio (UK) Area Defined and Coastal Station Radio (International) Area Defined licence classes. The reason for this proposed restriction is to provide unambiguous and easily specified geographical boundaries defining the UK in terms of set 50 km grid squares (as shown in Figure 4) based on the GB Ordnance Survey national grid reference system. Licensees will be able to transfer any combination of these transfer units, the minimum area transferable being a single unit.

Figure 4: Proposed maritime geographical transfer units



- 4.8 We propose that, at the boundary between Area Defined licences the level of power density, from a single transmitter, beyond the geographical boundary of the licence should be no more than -116 dBm/12.5 kHz. This is the standard specified boundary level for the Area Defined class.

Question 1) Do you agree with our proposal to make maritime licences transferable and the proposed limitations on the types of transfer to be allowed?

Satellite earth station proposals

- 4.9 We are proposing to extend the ability to transfer all or part of a WT Act licence to the following satellite earth station licences listed in Table 2.

Table 2: Summary of proposed transferable earth station licence classes

Licence class	Types of transfer
Permanent Earth Station (PES)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Transportable Earth Station (TES)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Satellite (Earth Station Network)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Satellite (Earth Station) (Non-Fixed Satellite Service)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.
Satellite (Earth Station) (Non-Geostationary)	Outright Concurrent Partial transfer - Transfers of individual assignments where licence covers more than one assignment.

- 4.10 Given the technical requirements of some licence classes and the non-exclusive nature of others we do not currently believe that there will be any demand for spectrum segmentation transfers. Therefore we are not proposing to permit this type of transfer unless stakeholders indicate that there is a demand for it.

Question 2) Do you agree with our proposal to make earth station licences in the satellite area transferable and the proposed limitations on the types of transfer to be allowed?

Impact of proposals

- 4.11 The transfer proposals in this document do not in themselves impose any additional burden on licensees. There is no change to the terms of their licences and no action required if they do not wish to engage in spectrum trading. The fact that we do not

know in advance how many licensees will take advantage of trading provisions means that it is difficult to accurately quantify the impacts and benefits.

- 4.12 The impact and extent of transfer activity will vary depending on the licence products and the demand for spectrum in particular areas.
- 4.13 If a licensee does wish to transfer their licence it would likely impose some transaction costs in dealing with the process. Although Ofcom does not charge an administration fee for whole or partial transfers under spectrum trading, licensees are required to notify Ofcom before a transfer is made and on completion of it. We minimise the costs of this process by the use of electronic notification. Despite this, the decision for a licensee to transfers all or part of their licence might increase administration costs.
- 4.14 There is a risk that competition may become distorted by one or more organisations gaining market power through spectrum acquisitions. If this were to happen then businesses could be subjected to anti-competitive practices and potentially be barred from entry into the market. However as a competition authority, Ofcom has the powers to take action against anti-competitive behaviour. We believe that the existing legal framework is sufficient to deal with any anti-competitive behaviour which may arise.
- 4.15 Ofcom would incur some one-off costs if we proceeded with proposals to introduce spectrum transfers for the maritime and satellite sectors. We would need to modify our licensing and online spectrum registers in order to support the process. Given the volumes of licences involved, these costs are likely to be outweighed by the ongoing administrative savings when dealing with take-overs. This is explained in more detail below.
- 4.16 In addition there are one-off costs associated with making a Statutory Instrument. However, as the underlying systems have already been developed to support transfers in other areas we do not expect extending this to the new licences to impose any significant cost. Given that we were already planning to amend the 2004 Trading Regulations to implement our proposals on “Simplifying Spectrum Trading”, the addition of any proposal from this consultation would lead only to a minor increase in cost of making the Statutory Instrument.

Benefits of proposals

- 4.17 Presently, if one company takes over another and the licence is not transferable this can result in cost and risk for the purchaser. If the acquisition involves a change in the legal identity of the licensee it is necessary to surrender the target’s licence and apply to Ofcom for a replacement. First of all the purchaser would be charged a licence fee for the new licence (transferred licences do not incur this as the initial licence fee has already been paid). Secondly, the new owners can have no guarantee that they will have access to the same spectrum that the previous WT licence holder held. This is because the licence is allocated on a first come first served basis and any delay between surrender and issue could result in the spectrum being reallocated to another user. Allowing transfers to happen would mitigate both of these issues.
- 4.18 By enabling transfers this would also help Ofcom to reduce time and costs when dealing with such take-overs. When dealing with certain new licence applications Ofcom has to conduct a number of coordination and assignment checks to ensure that the new licence would not cause interference to another licensed user. As the

licence has already been issued and has been through this process there is no need for Ofcom to carry out these checks again.

- 4.19 Permitting partial transfers enables existing licensees to evaluate their spectrum holdings to see whether there are benefits in allowing a third party to utilise parts of their authorisation. For example, a company may have a national licence that covers areas that they do not have any need for. A licensee may wish to sell off these areas for financial benefit. This is an example of where efficient use of spectrum can be driven by market-based mechanisms. Without such an incentive, it would be unlikely that this spectrum would be released unless Ofcom imposed a disincentive such as increasing licence fees.
- 4.20 Ofcom has duty to lift regulatory restrictions that are no longer necessary. In line with this duty we see no good reason to continue to prevent licensees in classes under discussion from taking advantage of trading if they consider it in their interests to do so. In addition the latest amendment to the European Union (EU) regulatory framework for electronic communications placed a great emphasis on making spectrum tradable and as free of technical restrictions as possible. These proposals would reduce the regulatory burden placed on companies by allowing licensees to transfer their licences. The authorisation of transfers would contribute to that by reducing overheads associated with acquisitions.
- 4.21 We believe that those users and business which do decide to trade spectrum will only do so if the benefits of transferring outweigh the transaction costs, therefore costs incurred in completing a transfer will always be offset by the benefits. Hence it may plausibly be concluded that introduction of the proposals can only lead to an overall net benefit. Trading can in general be expected to benefit citizens and consumers by making it easier for spectrum to migrate to higher value uses.

Risks

- 4.22 We believe that the risks involved in going ahead with the proposals in this document are minimal. In particular:
- **anti-competitive action** – we do not consider that there is material risk of trading leading to the control of a bottleneck in services and Ofcom has previously identified that existing competition policy tools should in general be sufficient to address most anti-competitive behaviour; and
 - **inefficient use of spectrum** – there is always a small risk of loss of efficiency from spectrum fragmentation resulting from partial trades; however, this risk is likely to be outweighed by the spectrum efficiency gains from enabling technology that can operate in smaller channel widths. More generally, we consider that user led decisions should be best at allocating resources in these cases.

Policy review

- 4.23 As part of our ongoing approach to making WT Act licences transferable we review our overall trading policy by monitoring a number of areas including:
- **Volume of licences transferred** - Ofcom will record the percentage of licences and spectrum that are transferred as a proportion of the volume that are permitted to be transferred.

- **Depth of spectrum markets** - Ofcom will monitor the emergence of intermediaries, including market makers, and technical consultants devoted to trading (both transfers and leasing). The emergence of these kinds of organisations is one indication of a vibrant and efficient spectrum market.
- **Evidence of value-enhancing trades** - Ofcom anticipates that a successful spectrum market will generate clear examples of value-enhancing transfers as well as reducing costs for businesses.

Section 5

Next Steps

- 5.1 This section provides information on what will happen following this consultation. After this consultation has closed we will review responses and publish a statement. If we decide to proceed with some or all of the proposals outlined in this document, we would need to make regulations by statutory instrument in order to amend the following two sets of regulations:
- the Wireless Telegraphy (Spectrum Trading) Regulations 2004; and
 - the Wireless Telegraphy (Register) Regulations 2004.
- 5.2 We would need to amend the existing 2004 Trading Regulations to include the licence classes to be made transferable. The existing regulations require Ofcom to publish information about proposed transfers that have been notified to us for approval. This information is displayed in the Trade Notification Register (TNR)⁹ and includes details of the licence being transferred, buyers' and sellers' details and, in the case of a partial transfer, a description of which rights under the licence are proposed to be transferred. If, following consultation, we proceed with making the licence classes specified in this document tradable, we would need to extend this publication requirement to all the new licences which will become transferable.
- 5.3 We would also need to make regulations by statutory instrument to amend the existing Wireless Telegraphy (Register) Regulations 2004 to add the licence classes to be made transferable to those about which Ofcom publishes information such as the identity and contact address of the holder of a wireless telegraphy licence. Publication of such information is necessary in order to support trading activity by providing information to the market. The information would be published electronically in an on-line database, the Wireless Telegraphy Register (WTR)¹⁰. The publishing of data on the WTR fulfils our obligation under the legislation and is compliant with the Data Protection Act.
- 5.4 In accordance with the requirements of section 122(4) and (5) of the WT Act we need to give notice of our intention to make any new regulations and allow stakeholders to comment on the draft regulations. Consultations on our proposed regulations are subject to a statutory minimum period of at least one month. If we are to proceed with any of the proposals in this document, we may include a copy of the draft regulations in the statement that follows this consultation. Otherwise, we will consult on the draft regulations following publication of our final statement. We expect to publish a statement on these proposals in March along with any proposed regulations.

⁹ Available at <http://spectruminfo.ofcom.org.uk/spectrumInfo/trades>

¹⁰ Available at <http://spectruminfo.ofcom.org.uk/spectrumInfo/licences>

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 February 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/transfer-maritime-satellite/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email paul.chapman@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Paul Chapman
Floor 3
Spectrum Policy Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3921
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Paul Chapman on 020 7981 3069.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period Ofcom intends to publish a statement which may include draft regulations by March 2012.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 We are inviting responses to the following questions set out throughout this consultations.

Question 1) Do you agree with our proposal to make maritime licences transferable and the proposed limitations on the types of transfer to be allowed?

Question 2) Do you agree with our proposal to make earth station licences in the satellite area transferable and the proposed limitations on the types of transfer to be allowed?