
Notice of Ofcom's proposals to amend the spectrum trading and register regulations

Proposed changes to Ofcom's spectrum trading and register rules

CONSULTATION:

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1. Overview

What we are proposing – in brief

Spectrum trading and the disclosure of licence/trading information is available for most (although not all) classes of licence under the Wireless Telegraphy Act 2006 (the “2006 Act”). The current trading and register system for licences is established under the:

- The Wireless Telegraphy (Spectrum Trading) Regulations 2012 (“the General Spectrum Trading Regulations”)¹;
- The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (“the Mobile Trading Regulations”)²; and
- The Wireless Telegraphy (Register) Regulations 2012 (“the Register Regulations”).³

Ofcom’s Statement *Enabling wireless innovation through local licensing* (July 2019) (“the Statement”) announced two new types of licence to make it easier for users in the UK to access radio spectrum on a shared basis.⁴ These are the Shared Access Licence and the Local Access Licence. The new licences provide localised access to spectrum bands that can support mobile technology.

We propose to update the spectrum trading and register regulations, detailed below, to include the new Shared Access Licences and Local Access Licences.⁵

As required by the 2006 Act, Ofcom must give notice of its proposals to do so and allow an opportunity for representations. This document therefore provides formal notice of our proposals to make the following statutory instruments:

- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019;
- The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019; and
- The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019.

We invite comments on our proposals to make the statutory instruments set out above and regulatory impact assessment by 5pm on 3 December 2019.

¹ [SI 2012/2187](#) as amended by SI 2015/1338 and SI 2019/950

² [SI 2011/1507](#) as amended by SI 2013/646, SI2015/1339 and SI 2019/951

³ [SI 2012/2186](#) as amended by SI 2014/1400, SI 2018/90 and SI 2019/951

⁴ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

⁵ Further guidance on the [Shared Access Licence](#) and [Local Access Licence](#) is available

2. Notice of proposals

Introduction

- 2.1 Ofcom began the implementation of spectrum trading for selected licence classes through the making of its original spectrum trading regulations in 2004. Those regulations have been amended from time to time to make various changes, including to add in newly tradable non-mobile spectrum licence classes and frequency bands. This included a full consolidation of the General Spectrum Regulations in 2012.
- 2.2 In 2011, Ofcom introduced trading for mobile telephony licences by the making of specific Mobile Trading Regulations. Those Regulations have been amended from time to time to make various changes, including to add in newly tradable licence classes and new frequency bands as more spectrum has been made available for mobile use. Licences covered by the Mobile Trading Regulations are subject to additional conditions regarding transfer compared with other licences covered by the General Spectrum Trading Regulations.
- 2.3 The Statement set out our decisions involving how the new the Shared Access Licences and the Local Access Licences could be traded. We proposed to permit transfers of the spectrum rights attaching to these new licences through outright or concurrent trading, but not a partial transfer.⁶ This may often occur where companies transfer assets between themselves as part of a takeover.
- 2.4 To achieve the desired trading and information/register arrangements for the new licences, we are therefore proposing to amend the General Spectrum Trading Regulations to account for the Shared Access Licences, the Mobile Trading Regulations to account for the Local Access Licences and the Register Regulations to cover both licence classes.
- 2.5 This document provides formal notice of our proposals to make the following statutory instruments:
- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 (“the proposed STA Regulations”);
 - The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019 (the “proposed MTA Regulations”); and
 - The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019 (“the proposed RA Regulations”),
- together, the “proposed Regulations”.
- 2.6 This notice is given in accordance with section 122(4) and (5) of the 2006 Act.

⁶ Paragraphs 3.196 to 3.199 and 4.71-4.74 of our [statement on enabling shared access](#)

The legislative framework

- 2.7 Ofcom is responsible for authorising civil use of the radio spectrum and achieves this by granting wireless telegraphy licences under the 2006 Act.
- 2.8 Whilst a licensee cannot assign its licence to another party, spectrum trading is a process that allows the holders of certain wireless telegraphy licences granted by us under section 8 of the 2006 Act to transfer the licence rights to another person. Such a transfer involves the notification to Ofcom and the grant by us of a new licence to the transferee.
- 2.9 Ofcom has the power under section 30 of the 2006 Act to make regulations to authorise the transfer to another person by the holder of a wireless telegraphy licence of rights and obligations arising by virtue of such a licence. When doing so, section 122(7) of the 2006 Act enables us to make different provisions for different cases and to make incidental provisions.
- 2.10 Under section 30(4) and (5) of the 2006 Act, transfers that fail to comply with such regulations (or with certain conditions in licences) will be void. Under section 30(6) of the 2006 Act, a transfer is void if it fails to comply with a direction given by Ofcom in exercise of a power conferred by such regulations.
- 2.11 Section 31 of the 2006 Act permits Ofcom to make regulations to establish and maintain relevant information in a register. Ofcom has made the Register Regulations and established the Wireless Telegraphy Act Register (WTR), which provides information about who is licensed to operate services in specific frequencies or geographical areas.⁷
- 2.12 The WTR provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns. The register supports the spectrum transfer process by providing basic information about allocated spectrum to the market.
- 2.13 Before making any regulations, we are required by section 122(4) of the 2006 Act to give notice of our proposal to do so. Under section 122(5), the notice must state that Ofcom proposes to make the regulations in question, set out their general effect, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time of at least one month before which any representations with respect to the proposal must be made to Ofcom.

Proposed changes

- 2.1 We are proposing to make:
- a) the proposed STA Regulations to update the General Spectrum Trading Regulations to include the Shared Access Licence class so it can be transferred and traded under the regulations. The proposed STA Regulations will also make minor amendments to

⁷ The WTR can be accessed via [the Ofcom website](#).

remove the Concurrent Spectrum Access Licence Class and amend the list of frequencies in Part 10 of Schedule 2 (discussed further below);

- b) the proposed MTA Regulations to update the Mobile Trading Regulations to include the Local Access Licence Class so it can be transferred and traded under the regulations; and
- c) the proposed RA Regulations, to add the Shared Access Licence and the Local Access Licence as new licence classes to be subject to the Register Regulations.

2.2 The proposed Regulations are set out in Annexes A1, A2 and A3, with their general effect described in Section 3 of this document.

Summary of New Trading Arrangements

2.3 Table 1 below summarises how the changes in the proposed MTA and STA Regulations would enable the Shared Access Licences and Local Access Licences to be traded.

Table 1 – Trading arrangements for new shared and local access.

Proposed Trading types	Licence class	Spectrum Frequencies	Conditions
Outright total trading or Concurrent total trading	Local Access Licence	703–733 MHz 738–788 MHz 791–821 MHz 832–862 MHz 880–915 MHz 925–960 MHz 1452–1492 MHz 1710–1781.7 MHz 1805–1876.7 MHz 1899.9–1980 MHz 2110–2170 MHz 2350–2390 MHz 2500–2690 MHz 3410–3800 MHz	Proposed MTA Regulations: -Ofcom may carry out a competition assessment before granting the trade. -Trading is limited to all the rights and obligations of the licence being subject to (a) complete transfer to a third party or (b) a transfer which results in a concurrent holding by the transferor and the transferee.
	Shared Access Licence	1781.7 - 1785 MHz 1876.7 - 1880 MHz 2390 - 2400 MHz 3.8 - 4.2 GHz 24.25 - 26.5 GHz	Proposed STA Regulations: -Trading is limited to all the rights and obligations of the licence being subject to (a) complete transfer to a third party or (b) a transfer which results in a concurrent holding by the transferor and the transferee.

3. General effect of our proposed regulations

The General Trading Regulations

- 3.1 Under the General Spectrum Trading Regulations, licensees in specific classes may carry out:
- outright total transfers, i.e. transfers of all of the rights and obligations arising under a licence to a third party;
 - concurrent total transfers, i.e. transfers of all of the rights and obligations arising under a licence to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
 - outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
 - concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s). This also includes time limited transfers.

Proposed STA Regulations

- 3.2 We are proposing to update the General Spectrum Trading Regulations to include the Shared Access Licence Class as a class of licence that can be transferred and traded under the regulations.⁸ For reference, the relevant frequency bands we propose to include for this class are listed in Table 1.
- 3.3 As a matter of policy, the type of trading permitted for the Shared Access Licence Class is limited to an outright total transfer or a concurrent total transfer. No form of partial transfer is proposed, as is permitted for other classes of licence such as business radio licences.⁹
- 3.4 Ofcom is proposing to remove the licence class known as the Concurrent Spectrum Access licence from the General Spectrum Trading Regulations. As set out in the Statement¹⁰, this class is now included in the Shared Access Licence class and existing Concurrent Spectrum Access licences will be varied to bring them within the Shared Access Licence Class.¹¹
- 3.5 The other minor amendments are to amend the frequencies listed in Part 10 of Schedule 2 of the General Spectrum Trading Regulations. We propose to:

⁸ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

⁹ See page 55 of our statement on [enabling wireless innovation through local licensing](#) (July 2019)

¹⁰ Paragraph 3.32 to 3.33, also paragraph 6.4

¹¹ The Concurrent Spectrum Access Licences were previously held for the spectrum in the 1781.7 to 1785.0 MHz band paired with the 1876.7 to 1880.0 MHz Band. Twelve licences were awarded, each having equal rights to shared use of the whole spectrum range, subject to coordination with other sharers. The licences were technology neutral, referencing the Interface Requirements IR 2014 (GSM) and IR 2045 (Concurrent Spectrum Access)

- add 7900 to 8400 MHz into the frequencies for fixed link licences – this follows a commitment to sharing this spectrum by military users. This change anticipates greater civil use of the band sharing alongside military users.
- remove 64 to 66 GHz from the list – this flows from Ofcom’s decision in November 2018 to change the authorisation approach for fixed wireless systems operating in the 64 to 66 GHz band from light licence to licence exempt. As fixed wireless systems are no longer licensed, trading regulations are no longer needed for this frequency band.¹²

The Mobile Trading Regulations

3.6 In order for a transfer to take place under the Mobile Trading Regulations, Ofcom must first consent to the proposed transfer. In determining whether or not to consent to a proposed transfer, we need to take into account (as outlined in regulation 8 of the Mobile Trading Regulations) whether:

- the holder is, or the concurrent holders are, in breach of the terms of the wireless telegraphy licence under which the rights and obligations are to be transferred;
- the transferee is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;
- in the case of a transfer authorised by regulation 5 the transferor is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;
- the transferee is able to meet any criteria relating to the persons to whom a wireless telegraphy licence of the class under which rights and obligations are to be transferred may be granted;
- competition is likely to be distorted as a result of the transfer; and
- it is requisite or expedient to refuse consent to the transfer:
 - i) in the interests of national security;
 - ii) 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 party; or
 - iii) for the purposes of complying with a direction by the Secretary of State given to Ofcom under section 5 of the Communications Act 2003 or section 5 of the 2006 Act

3.7 Under regulation 9 of the Mobile Trading Regulations, we may impose conditions in relation to the grant of consent for the transfer. Licensees may not be able to transfer the rights and obligations of their licence until these conditions are met.

¹² See the [information on fixed terrestrial links](#) available on our website.

Proposed MTA Regulations

- 3.8 We are proposing to update the Mobile Trading Regulations to include the Local Access Licence Class as a class of licence that can be transferred and traded under the regulations.¹³
- 3.9 The Local Access Licence can be granted in any frequency band covered by the Mobile Trading Regulations.¹⁴ For reference, the relevant frequency bands we propose to include for this class are listed in Table 1.
- 3.10 As a matter of policy, and in contrast to certain other types of licence class covered by the Mobile Trading Regulations, the type of trading permitted for the Local Access Licence Class is limited to an outright total transfer or a concurrent total transfer and not any form of partial transfer, as permitted for other classes of licence such as business radio licences.¹⁵ Outright total transfer and concurrent total transfer arrangements are especially relevant if one company is acquired or bought out by another and the Local Access Licences are needed to be transferred as part of maintaining business operations and innovation.

The Register Regulations

- 3.11 In late 2004, Ofcom made regulations to establish and maintain a register about spectrum trades and licences. The existing register established through the Register Regulations publishes information about a broad range of licence classes and facilitates spectrum trading by providing:
- a) information about existing licences for potential traders including, the constraints on the use of the specific frequencies or bands and who holds what frequencies;
 - b) basic information about proposed and completed transfers to facilitate the transparency of secondary trading.
- 3.12 The proposed RA Regulations would add the Shared Access Licence and Local Access Licence Classes to the Register Regulations, enabling certain information about those licences to be maintained and published by Ofcom. The information would be published electronically in an on-line register, the WTR.

Extent and application

- 3.13 The General Trading Regulations and Mobile 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 relevant sections of the

¹³ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

¹⁴ See page 78 of our statement on [enabling wireless innovation through local licensing](#) (July 2019)

¹⁵ See page 79 of our statement on [enabling wireless innovation through local licensing](#) (July 2019)

2006 Act relating to transfers to these places.¹⁶ In line with the General Trading Regulations and Mobile Trading Regulations, the proposed STA and MTA Regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man.

- 3.14 The Register Regulations do not extend to the Channel Islands or to the Isle of Man. The proposed RA Regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man.

Comments and representations

- 3.15 Drafts of the proposed Regulations and Regulation Impact Assessments of the proposed Regulations are set out in Annexes A1 to A4 are available on Ofcom's website (www.ofcom.org.uk). A paper copy may be obtained from Elizabeth Press, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA. We are inviting comments on our proposals to make the proposed Regulations.
- 3.16 Subject to our consideration of responses, we intend to bring the Proposed Regulations into force in December 2019.

Question 1: Do you have any comments on our proposals to make the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019?

Question 2: Do you have any comments on our proposals to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019?

Question 3: Do you have any comments on our proposals to make the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019?

Question 4: Do you have any comments on the Draft Regulation Impact Assessments of the proposed Regulations?

These are set out in draft form in Annexes A1 to A4. Comments are invited by 5pm on 3 December 2019

The overview in this document is a simplified summary only. The proposals we are consulting on and our reasoning are set out in the full document.

¹⁶ Paragraph 2 of the Wireless Telegraphy (Jersey) Order 2006 extends to Jersey the whole Part 2 of the WT Act other than sections 30 and 51. Paragraph 2 of the Wireless Telegraphy (Isle of Man) Order 2007 extends to the Isle of Man the whole Part 2 of the WT Act other than sections 30, 49 and 51.

A1. Proposed Mobile Trading Amendment Regulations

STATUTORY INSTRUMENTS

2019 No. [***]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 30(1) and (3) and 122(7) of the Wireless Telegraphy Act 2006⁽¹⁷⁾ (the “Act”).

Before making these Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4) 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) (No. 2) Regulations 2019 and shall come into force on ***.

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

2.—(1) The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011⁽¹⁸⁾ shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 4(3), after the words “Column 1 of” insert “each Part of”, and after the words “Column 2 of” insert “the same Part of”.

(3) In regulation (5)(a)—

(a) in sub-paragraph (i), after the words “Column 1 of” insert “Part 1 of”, and after the words “Column 2 of” insert “Part 1 of”; and

(b) in sub-paragraph (ii), after the words “Column 1 of” insert “Part 1 of”, and after the words “Column 2 of” insert “Part 1 of”.

(4) In the Schedule—

⁽¹⁷⁾ 2006 c.36.

⁽¹⁸⁾ S.I. 2011/1507, amended by S.I. 2013/646, S.I. 2015/1339 and S.I. 2019/951.

- (a) before the table, insert the heading “Part 1”;
- (b) after the table, insert—

“PART 2

<i>Column 1</i>	<i>Column 2</i>
Licence class	Frequency bands
Local Access licence	703–733 MHz
	738–788 MHz
	791–821 MHz
	832–862 MHz
	880–915 MHz
	925–960 MHz
	1452–1492 MHz
	1710–1781.7 MHz
	1805–1876.7 MHz
	1899.9–1980 MHz
	2110–2170 MHz
	2350–2390 MHz
	2500–2690 MHz
	3410–3800 MHz”

[Date ***]

Group Director of Spectrum Group
For and by the authority of the Office of Communications

A2. Proposed Spectrum Trading Amendment Regulations

STATUTORY INSTRUMENTS

2019 No. [***]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006⁽¹⁹⁾ (the “Act”).

Before making these Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4) 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

3. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 and shall come into force on * * *.

Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2012

2.—(1) The Wireless Telegraphy (Spectrum Trading) Regulations 2012⁽²⁰⁾ shall be amended in accordance with the following provisions of this regulation.

(2) For regulation (5), substitute—

“5. Shared Access licence class

Subject to regulation 8, a transfer by the holder of a wireless telegraphy licence within the licence class specified in Column 1 of Part 1 of Schedule 2 which applies to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part, is authorised if—

- (a) the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer; or

⁽¹⁹⁾ 2006 c.36.

⁽²⁰⁾ S.I. 2012/2187, amended by S.I. 2015/1338 and S.I. 2019/950.

(b) the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer.”

(3) In Schedule 2—

(a) substitute the table in Part 1 with the following table—

“Column 1	Column 2
Licence class	Frequency bands
Shared Access licence	1781.7–1785 MHz
	1876.7–1880 MHz
	2390–2400 MHz
	3800–4200 MHz
	24.25–26.5 GHz”

(b) in the table in Part 10—

(i) omit the words “64–66 GHz” in Column 2; and

(ii) insert the words “7900–8400 MHz” in the line below “7425–7900 MHz” and above “10.7–11.7 GHz” in Column 2.

[Date * * *]

Group Director of Spectrum Group
For and by the authority of the Office of Communications

A3. Proposed Register Amendment Regulations

STATUTORY INSTRUMENTS

2019 No. [***]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 30(1) and (3) and 122(7) of the Wireless Telegraphy Act 2006⁽²¹⁾ (the “Act”).

Before making these Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4) 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

4. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019 and shall come into force on ***.

Amendment of the Wireless Telegraphy (Register) Regulations 2012

5.—(1) The Wireless Telegraphy (Register) Regulations 2012⁽²²⁾ shall be amended in accordance with the provisions of this regulation.

(2) In regulation 4 paragraph (1)(a), substitute “Parts 2 to 14” with “Parts 2 to 15”.

(3) In Part 5 of Schedule 2, substitute—

“PART 5

Column 1

Column 2

Class

Frequency band

⁽²¹⁾ 2006 c.36.

⁽²²⁾ S.I. 2012/2186, amended by S.I. 2013/640, S.I. 2015/1400, S.I. 2018/90 and S.I. 2019/952.

Shared Access

1781.7–1785 MHz
1876.7–1880 MHz
2390–2400 MHz
3800–4200 MHz
24.25–26.5 GHz”

(4) After Part 14 of Schedule 2, insert—

“PART 15

<i>Column 1</i>	<i>Column 2</i>
Class	Frequency band
Local Access	703–733 MHz
	738–788 MHz
	791–821 MHz
	832–862 MHz
	880–915 MHz
	925–960 MHz
	1452–1492 MHz
	1710–1781.7 MHz
	1805–1876.7 MHz
	1899.9–1980 MHz
	2110–2170 MHz
	2350–2390 MHz
	2500–2690 MHz
	3410–3800 MHz”

[Date ***]

Name
Group Director of Spectrum Group
For and by the authority of the Office of Communications

A4. Draft regulation impact assessments - spectrum trading and register regulations 2019

The Wireless Telegraphy (Spectrum Trading)
(Amendment) (No.2) Regulations 2019

The Wireless Telegraphy (Mobile Spectrum Trading)
(Amendment) (No.2) Regulations 2019

The Wireless Telegraphy (Register) (Amendment)
(No.2) Regulations 2019

Regulatory impact assessments

Introduction

- A4.1 Ofcom acts in accordance with Government practice that, where a statutory regulation is made, a Regulatory Impact Assessment (“RIA”) must be undertaken. We also comply with our duty under section 7 of the Communications Act 2003 (the “2003 Act”) which imposes a duty on Ofcom to carry out impact assessments where our decisions would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities.
- A4.2 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 policymaking. As a matter of policy, we are committed to carrying out and publishing impact assessments in relation to the vast majority of our policy decisions.
- A4.3 For further information about our approach to impact assessments, see the guidelines, [Better policymaking: Ofcom’s approach to impact assessment](#), which are on our website.
- A4.4 The draft RIAs relate to our proposals to make certain regulations.
- A4.5 The next section sets out the draft assessment for the proposed trading regulations. The section following, sets out the draft assessment for the proposed register regulations. The draft assessments are consistent with the Government practice on RIAs and Ofcom’s duty under the 2003 Act.

Draft regulatory impact assessment – trading regulations

The Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 and the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019

This is a draft of the regulatory impact assessment that we are currently planning to make at the same time as making the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 and the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019.

- A4.6 The analysis set out in this document represents a regulatory impact assessment following Ofcom’s notice of proposals to make the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 (the “proposed STA Regulations”) and the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019 (the “proposed MTA Regulations”).
- A4.7 Regulatory impact assessments are 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 many regulators. In producing the

assessment in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Proposal, purpose and intended effect

- A4.8 In July 2019, Ofcom published a Statement titled *Enabling wireless innovation through local licensing*.²³ The Statement explained how we will allow more people and businesses to use spectrum from a choice of frequency bands, which could support growth and innovation across a range of sectors.
- A4.9 Ofcom set out its decision to introduce two new licence types, which are intended to make it easier for a wider range of users in the UK to access radio spectrum on a shared basis. The new licence classes are:
- a) **the Shared Access licence**, which gives access to four spectrum bands which support mobile technology (in the 1800 MHz, 2300 MHz, 3.8-4.2 GHz and 24.25-26.5 GHz frequency bands); and
 - b) **the Local Access licence**, which provides a way for other users to access spectrum which has already been licensed to the UK's Mobile Network Operators (MNOs), in locations where an MNO is not using its spectrum.
- A4.10 Ofcom has adopted a flexible approach to the Shared Access Licence and the Local Access Licence in order to support innovation and an efficient use of spectrum. We have decided, consistent with other spectrum trading policies to allow licensees to transfer both classes of new licence. For example, this may occur when transferring assets between companies as part of a takeover, or to ensure a continuation of service where multiple users agree to jointly hold a licence, for example in a multi-storey building.
- A4.11 In order to permit trading of these licence products, amendments are required to:
- a) the Wireless Telegraphy (Spectrum Trading) Regulations 2012 ("the General Spectrum Trading Regulations"),²⁴ and
 - b) the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 ("the Mobile Trading Regulations").²⁵
- A4.12 In October 2019, we proposed to make:
- a) the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019 ("the proposed STA Regulations"):
 - i) to update the General Spectrum Trading Regulations to include the Shared Access Licence Class as a class of licence that can be transferred and traded under the regulations, and remove the Concurrent Spectrum Access Licence Class, which is being subsumed into the Shared Access Licence Class; and

²³ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

²⁴ [SI 2012/2187](#) as amended by SI 2015/1338 and SI 2019/950

²⁵ [SI 2011/1507](#) as amended by SI 2013/646, SI 2015/1339 and SI 2019/951

- ii) to add 7900 to 8400 MHz and remove 64 to 66 GHz from the list of frequencies in Part 10 of Schedule 2, and
 - b) the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019 (the “proposed MTA Regulations”), to update the Mobile Trading Regulations to include the Local Access Licence Class as a class of licence that can be transferred and traded under the regulations.
- A4.13 The proposed MTA and STA Regulations would limit the types of transfer of rights and obligations relating to Shared Access Licences and the Local Access Licences. Specifically:
- the proposed STA Regulations would make available outright and concurrent transfers of the Shared Access Licences, and
 - the proposed MTA Regulations would make available outright and concurrent transfers of Local Access Licences.
- A4.14 In addition, the effect of including the Local Access Licence Class in the Mobile Trading Regulations is to enable Ofcom to conduct an assessment of the impact on competition of any trade before deciding on whether to approve that trade. This is because regulation 8(e) of the Mobile Trading Regulations requires Ofcom to take into account whether competition is likely to be distorted as a result of the transfer in determining whether or not to consent to a proposed transfer. Regulation 8 also makes provisions about other matters, which Ofcom must also take into account before giving consent to a proposed transfer.

Ofcom’s duties and policy objectives

- A4.15 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. In particular, we must secure the optimal use for wireless telegraphy of spectrum and have regard to the principle under which all regulatory activities should be targeted only at cases in which action is needed. In proposing the changes, we have considered the wider impact beyond immediate stakeholders in the radiocommunications community.
- A4.16 In consulting on whether to make the proposed MTA Regulations and the proposed STA Regulations, we recognise the wider impact beyond immediate stakeholders in the radiocommunications community. Specifically:
- a) we consider that the MTA and STA proposals would facilitate and encourage the development of new uses for spectrum which will benefit both business and consumers. Facilitating access to spectrum for new users plays an important role in encouraging innovation; and

b) we consider that our MTA proposals would benefit consumers as they would have the effect of protecting competition in the spectrum market by ensuring that we would be able to conduct an assessment of the impact on competition of any trade before deciding whether to approve that trade under the Mobile Trading Regulations. We consider that such an ex ante competition check would, in turn, allow consumers/citizens to benefit from a variety of service providers, and from cheaper communications, new innovative services and increased choice.

A4.17 In addition to the 2003 Act, the European legislative framework requires that we ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. Although our policy to date has been that a competition assessment is not necessary for the majority of trades, we normally include in the Mobile Trading Regulations all bands that can be used for providing mobile services to consumers. This is because we consider that mobile spectrum is different from spectrum in general, in part because we believe that there is a material risk that concentration of mobile spectrum holdings could affect retail and wholesale competition in mobile services.

A4.18 As a matter of policy, the trading arrangements for Shared Access Licences and Local Access Licences are only subject to outright total transfer or concurrent total transfer. They are not subject to any form of partial transfer permitted for other classes of licence such as business radio licences.

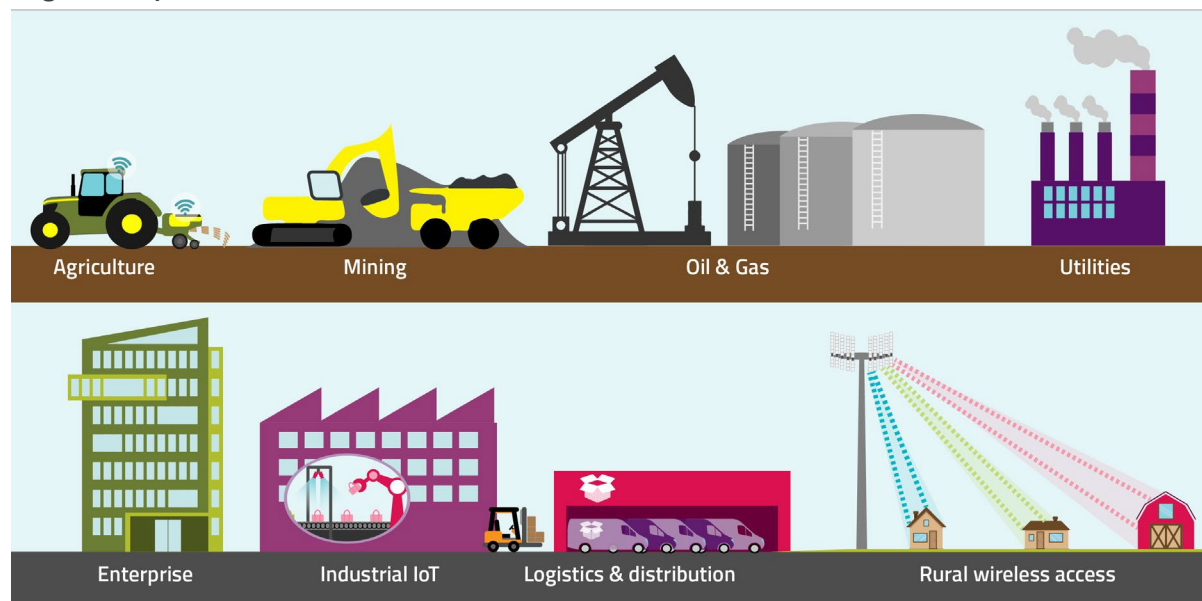
Costs for Ofcom to consider

A4.19 There are one-off administrative costs associated with making statutory instruments. We consider these implementation costs to be low for the proposed MTA Regulations and proposed SRA Regulations. Ofcom would incur little cost as a result of making these proposed Regulations. The framework for spectrum trading has already been set up and for us to include the Shared Access Licences and Local Access Licences and their frequency bands in the General Spectrum Trading Regulations and Mobile Trading Regulations should require little additional cost.

Cost to business, including small businesses and the voluntary sector

A4.20 A number of business sectors are likely to be affected by the introduction and availability of the Shared Access Licences and Local Access Licences.

Figure 1: Examples of Shared Access Licence uses (tradeable under the Mobile Trading Regulations)



- A4.21 Shared Access Licences will facilitate private networks and mobile coverage improvement schemes. Local Access Licences will facilitate local mobile connectivity solutions such as in valleys or tunnels; automation in discrete settings for example factories; private networks in remote secure locations such as an oil refinery; or improving broadband connectivity in hard to reach local communities.
- A4.22 One aspect which is different between Shared Access Licences and Local Access Licences and their frequency bands is that the Mobile Trading Regulations may lead to additional costs of supplying information as part of a licence transfer application (providing additional information for a competition assessment). However, we believe these costs to be relatively minor and are required in order to fulfil our statutory duties.
- A4.23 As regards to costs to business more generally, the likely benefits of spectrum or mobile trading will generally outweigh the costs. Consistent with previous Regulation Impact Assessments on Mobile Trading and General Spectrum Trading, which assessed the same considerations,²⁶ we believe that the costs to business to be proportionate, because the costs of spectrum trading would only fall on those trading Local Access or Shared Access Licences and for whomever is seeking the benefit of the licence trade.
- A4.24 In summary, Ofcom considers that the benefits of the inclusion of the Shared Access Licences and Local Access Licences and their frequency bands into the trading arrangements are likely to substantially outweigh the costs.

²⁶ See for example the RIAs for the [making of certain regulations in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum](#) from May 2019, the [proposals to make changes to spectrum trading regulations for mobile services in the 3600 to 3800 MHz band](#) from December 2016, and the [RIAs for the Spectrum Trading and Register Regulations](#) from December 2004. These concluded that the likely benefits of spectrum trading generally outweighed the costs

A4.25 We do not consider that our proposals in relation to these proposed Regulations will have any material cost implications for small businesses or the voluntary sector.

Equality Impact Assessment

A4.26 Following an initial assessment of the proposals to include Shared Access Licences and Local Access Licences in the current trading arrangements, we considered that it is reasonable to assume that any impacts on consumers and citizens arising from the proposed Regulations would not differ significantly between groups or classes of UK consumers and citizens.

A4.27 We do not consider that there is evidence to suggest that the proposed Regulations would have a significantly greater direct financial impact on groups including based on gender, race or disability or for consumers and citizens in Northern Ireland relative to consumers and citizens in general.

A4.28 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 at this stage. This is because we do not consider the proposals on the trading arrangements being considered would have, nor are they intended to have, a significant differential impact on different gender or racial groups, on consumers or citizens in Northern Ireland or on disabled consumers or citizens compared to those in general.

Conclusion

A4.29 Ofcom's assessment is that the benefits of including the Shared Access Licences and Local Access Licences in the proposed STA and MTA Regulations are likely to outweigh the costs. The benefits could be significant in terms of enabling spectrum trades and the costs, where they arose, would be relatively minor and are required in order to fulfil our statutory duties.

Draft regulatory impact assessment – register

The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019

This is a draft of the regulatory impact assessment that we are currently planning to make at the same time as making The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019.

A4.30 The analysis set out in this document represents a regulatory impact assessment following Ofcom's notice of proposals to make the Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2019 (the "proposed RA Regulations").

A4.31 Regulatory impact assessments are 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 many regulators. In producing the

assessment in this document, Ofcom has had regard to such general guidance as it considers appropriate, including Cabinet Office guidance.

Proposal, purpose and intended effect

- A4.32 In July 2019, Ofcom published a Statement titled *Enabling wireless innovation through local licensing*.²⁷ The Statement explained how we will allow more people and businesses to use spectrum from a choice of frequency bands, which could support growth and innovation across a range of sectors.
- A4.33 Ofcom set out its decision to introduce two new licence products, which are intended to make it easier for a wider range of users in the UK to access radio spectrum on a shared basis. The new products are:
- a) **the Shared Access licence**, which gives access to four spectrum bands which support mobile technology (in the 1800 MHz, 2300 MHz, 3.8 to 4.2 GHz and 24.25 to 26.5 GHz frequency bands); and
 - b) **the Local Access licence**, which provides a way for other users to access spectrum which has already been licensed to the UK's Mobile Network Operators (MNOs), in locations where an MNO is not using their spectrum.²⁸
- A4.34 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.²⁹
- A4.35 The proposed RA Regulations would enable information about the Shared Access Licences and Local Access Licences to be published in the Wireless Telegraphy Register. The two new licence classes and their frequencies will be added to Schedule 2 of the Regulations. The proposed RA Regulations implement the policy decisions made in the *Enabling Wireless innovation statement*.³⁰ By including both new licences in the Register Regulations, Ofcom will facilitate spectrum trading by 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.
- A4.36 The inclusion of information about Shared Access Licences and the Local Access Licences is assumed, except where security considerations prevent publication of information.

²⁷ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

²⁸ This includes spectrum in 703–733 MHz, 738–788 MHz, 791–821 MHz, 832–862 MHz, 880–915 MHz, 925–960 MHz, 1452–1492 MHz, 1710–1781.7 MHz, 1805–1876.7 MHz, 1899.9–1980 MHz, 2110–2170 MHz, 2350–2390 MHz, 2500–2690 MHz and 3410–3800 MHz frequency bands

²⁹ The WTR [provides information](#) about who is licensed to operate services in specific frequencies or geographical areas.

³⁰ See our statement on [enabling wireless innovation through local licensing](#) (July 2019)

Costs for Ofcom to consider

- A4.37 Ofcom carried out a regulatory impact assessment for the Register Regulations when they were made in September 2012.³¹ Consistent with the conclusions of that Regulation Impact Assessment we believe 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 proposed RA Regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom for the inclusion of the Shared Access Licences and Local Access Licences would be minimal and would be limited to updating the register requirements to include the new licence products and their associated frequencies.
- A4.38 If a register were not established, there would be a real risk that the effectiveness of General Spectrum Trading and Mobile Trading would be limited and transaction costs for businesses wanting to trade the new licences could be higher. Given that the register has been in place since 2004, the additional costs of including the new licence products 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 businesses and the voluntary sector

- A4.1 A range of sectors are likely to be affected by the RA Regulations including private networks providers, providers of connected services for agricultural, mining, utilities and other industries. All users are likely to benefit from a more efficient supply of communications services as a result of this decision.
- A4.2 Ofcom considers that the costs for business associated with the RA Regulations are likely to be negligible (and may, indeed, be zero). As explained above, the main costs associated with including information in connection with the new licence products in Ofcom's publicly-available register will fall upon Ofcom (although these are likely to be relatively small in any event).
- A4.3 Ofcom does not consider that the proposed RA Regulations will have any material implications for business or the voluntary sector.

Equality Impact Assessment

- A4.4 We also have considered whether the proposed Register Regulations would have a particular impact in relation to the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. We are satisfied that the Regulations will not be detrimental to any group defined by these protected characteristics.

³¹ See [Ofcom's decision to make Wireless Telegraphy Trading and Register Regulations](#) and the [RIA for the Register Regulations](#) from December 2004

- A4.5 Following an initial assessment of the proposals to include Shared Access Licences and Local Access Licences in the Wireless Telegraphy Register, we considered that it is reasonable to assume that any impacts on consumers and citizens arising from the proposed Regulations would not differ significantly between groups or classes of UK consumers and citizens.
- A4.6 We do not consider that there is evidence to suggest that the proposed Register Regulations would have a significantly greater direct financial impact on groups including based on gender, race or disability or for consumers and citizens in Northern Ireland relative to consumers and citizens in general.
- A4.7 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 at this stage. This is because we do not consider that the proposals on the arrangements being considered would have, nor are they intended to have, a significant differential impact on different gender or racial groups, on consumers and citizens in Northern Ireland or on disabled consumers and citizens compared to those in general.

Conclusion

- A4.8 Ofcom's assessment is that the benefits of including the Shared Access Licences and Local Access Licences in the Register Regulations 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.

A5. Responding to this consultation

How to respond

- A5.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 3 December 2019.
- A5.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/proposal-amend-spectrum-trading-and-register-regulations>. You can return this by email or post to the address provided in the response form.
- A5.3 If your response is a large file, or has supporting charts, tables or other data, please email it to elizabeth.press@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A5.4** Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Elizabeth Press
Spectrum Management and Authorisation
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A5.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A5.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A5.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A5.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A5.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 8. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A5.10 If you want to discuss the issues and questions raised in this consultation, please contact Elizabeth Press on 02076206814, or by email to elizabeth.press@ofcom.org.uk

Confidentiality

- A5.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A5.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A5.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A5.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A5.15 Following this consultation period, Ofcom plans to publish a statement in December 2019.
- A5.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A5.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 6.
- A5.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A5.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A6. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A6.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A6.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A6.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A6.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A6.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A6.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A6.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A7. Consultation coversheet

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)

A8. Consultation questions

Question 1: Do you have any comments on our proposals to make the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2019?

Question 2: Do you have any comments on our proposals to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) (No. 2) Regulations 2019?

Question 3: Do you have any comments on our proposals to make the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2019?

Question 4: Do you have any comments on the Draft Regulation Impact Assessments of the proposed Regulations?

These are set out in draft form in Annexes A1 to A4.