
Statement on the making of certain regulations in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum

Notice of making a limitation order and amending the mobile trading and the register regulations

STATEMENT:

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1. Overview

This document provides notice of Ofcom's decision to make four statutory instruments in connection with the award of spectrum in the 700 MHz and 3.6-3.8 GHz bands.

What we have decided – in brief

On 31 January 2019, we published a notice¹ of our proposals to make these statutory instruments in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum:

- a) The Wireless Telegraphy (Limitation of Number of Licences) Order 2019;
- b) The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019;
- c) The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019; and
- d) The Wireless Telegraphy (Register) (Amendment) Regulations 2019.

We have considered the responses to our consultation and have now decided to make these statutory instruments.

This overview is a simplified high-level summary only. The decisions we have made and our reasoning are set out in the full document.

¹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

2. Introduction

- 2.1 On 31 January 2019, we published a notice in respect of our proposals to make the following statutory instruments in connection with the award of 700 MHz and 3.6-3.8 GHz spectrum (the “**January 2019 consultation**”):
- The Wireless Telegraphy (Limitation of Number of Licences) Order 2019;
 - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019;
 - The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019; and
 - The Wireless Telegraphy (Register) (Amendment) Regulations 2019.
- 2.2 The January 2019 consultation contained draft statutory instruments and invited comments on these by 12 March 2019.
- 2.3 The draft statutory instruments published for consultation in January 2019 followed a consultation document setting out our proposals for awarding wireless telegraphy licences for spectrum in the 700 MHz band and the 3.6-3.8 GHz band (the “**Auction Consultation**”)², which we published on 18 December 2018.³

Responses to the January 2019 consultation

- 2.4 We received a response from BT/EE⁴ to the January 2019 consultation, which is published on our website. We summarise and discuss BT/EE’s comments in section 3.

Making and publication of certain final statutory instruments in connection with the award

- 2.5 Having considered the responses to our January 2019 consultation, we decided to make the proposed statutory instruments and made all of them, except for the Wireless Telegraphy (Limitation of Number of Licences) Order 2019, on 20 May 2019. These will be available on the www.legislation.gov.uk website from 22nd May 2019. Copies in draft form are also annexed to this statement for indicative purposes, in the form submitted for registration and publication after they have been made by Ofcom. www.legislation.gov.uk is the only authorised source for published statutory instruments.
- 2.6 Since the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2019 contains a reference to the regulations setting out the rules for the auction of the 700 MHz band and the 3.6-3.8 GHz band (the “**Auction Regulations**”), which we have not made yet, we currently plan to make the limitation order as soon as the Auction Regulations have been made.

² <https://www.ofcom.org.uk/consultations-and-statements/category-1/award-700mhz-3.6-3.8ghz-spectrum>

³ On 31 January 2019, we also published a separate document giving formal notice of our intention make The Wireless Telegraphy (Licence Award) Regulations 2019.

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0025/146851/BT-EE.pdf

Document structure

2.7 The rest of this document is structured as follows:

- a) **section 3** provides further details of our decision following the January 2019 consultation;
- b) **section 4** contains copies of the regulatory impact assessments for the statutory instruments in the form placed in the libraries of the both House of Parliament (or in draft form, in the case of the limitation order, which we have not made yet); and
- c) **annexes A1-A4** contain drafts of the statutory instruments in the form submitted for registration and publication after they were made (or in draft form, in the case of the limitation order, which we have not made yet).

3. Ofcom's decisions

The Wireless Telegraphy (Limitation of Number of Licences) Order 2019

- 3.1 In the January 2019 consultation, we proposed to limit the number of licences to be awarded in relation to the 700 MHz and 3.6-3.8 GHz bands for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of these bands. Accordingly, we proposed to make an order under section 29 of the Wireless Telegraphy Act 2006 (the “**WT Act**”).⁵
- 3.2 BT/EE said that it is “*content with all four Statutory instruments as drafted*”. Having received no further comments from stakeholders on this proposal, we have decided to make the order as proposed for consultation. However, since the proposed order (Article 2(2)) contains a reference to the Auction Regulations, which we have not made yet, we currently plan to make the limitation order as soon as the Auction Regulations have been made.

The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019 and The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019

Including the 700 MHz and 3.6-3.8 GHz bands in the Mobile Trading Regulations

- 3.3 In the Auction Consultation (paragraphs 10.13-10.15 and A5.56), we proposed to make the award licences tradable. In line with that proposal, in the January 2019 consultation, we proposed to include the 700 MHz and 3.6-3.8 GHz bands within The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “**Mobile Trading Regulations**”) since we expect these bands to be used for mobile access in the future. We also proposed to bring the frequencies in the 3.6-3.8 GHz band which are currently licensed to UK Broadband within the Mobile Trading Regulations as UK Broadband has indicated to us that it intends to use these frequencies for providing mobile services.
- 3.4 The effect of including these spectrum bands in the Mobile Trading Regulations is to enable us to conduct an assessment of the impact on competition of any trade before deciding on whether to approve that trade.
- 3.5 In order to give effect to these proposals, we proposed to make two sets of regulations:

⁵ Section 29 of the WT Act implemented Article 7(1)(c) of the Authorisation Directive. The Authorisation Directive is part of the European Common Regulatory Framework for electronic communications networks and services, which comprises: (i) the Framework Directive (Directive 2002/21/EC), (ii) the Authorisation Directive (Directive 2002/20/EC), (iii) the Access Directive (Directive 2002/19/EC), (iv) the Universal Service Directive (Directive 2002/22/EC) and (v) the Directive on privacy and electronic communications (Directive 2002/58/EC). We note that the European Electronic Communications Code (Directive 2018/1972/EU) will repeal and replace these directives with effect from 21 December 2020.

- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019, to remove the 742–750 MHz, 758–766 MHz and 3605–3689 MHz frequencies from the Schedule to The Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the “**General Trading Regulations**”); and
- The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019, to include the 700 MHz and 3.6-3.8 GHz bands (including the frequencies currently licensed to UK Broadband) within the Schedule to the Mobile Trading Regulations.⁶

Stakeholders’ comments (BT/EE and H3G)

3.6 In response to our January 2019 consultation, BT/EE⁷ said that it is “*content with all four Statutory instruments as drafted*” and made the following comments in relation to our Trading Guidance Notes⁸ and spectrum leasing:

- Trading Guidance Notes** – BT/EE suggested that we should update our Trading Guidance Notes (in particular, Table 4) for two reasons: (i) to reflect our decision to bring the frequencies in the 3.6-3.8 GHz band which are currently licensed to UK Broadband within the Mobile Trading Regulations; and (ii) to clarify that leasing is not prohibited under the Mobile Trading Regulations; and
- Leasing** – BT/EE said that there remains a wider issue to be resolved, which is “*whether a more consistent approach is appropriate as to whether licences for mobile spectrum permit leasing, and whether leasing should be more widely permitted for mobile licences*”. In its view, this is “*particularly relevant in light of the fact that Ofcom is separately proposing to introduce new users in spectrum already licensed on a national basis to MNOs but where leasing by MNOs is not currently permitted*”.

3.7 **Partial transfers** - In addition, in its response to the Auction Consultation, H3G⁹ made the following comment: “*There is one other obstacle to trades involving UKB’s licence. The Wireless Telegraphy Regulations 2012 do not permit partial transfers of those frequencies. Ofcom proposes to bring them within the Mobile Spectrum Trading Regulations to allow partial transfers. In practice, this means trades would have to wait until Ofcom decides on the auction regulations. We will liaise with Ofcom over the next few weeks to discuss our proposed approach to trading and explore ways of expediting this.*”

Ofcom’s assessment and decision

3.8 We plan to update our Trading Guidance Notes to reflect our decision to bring the frequencies in the 3.6-3.8 GHz band which are currently licensed to UK Broadband within the Mobile Trading Regulations. In particular, we intend to clarify that this inclusion will not affect the leasing provisions set out in UK Broadband’s licence and

⁶ Since that Schedule already contained the frequency band “3410-3600 MHz”, we proposed to insert the frequency band 3600–3800 MHz by extending that band to “3410-3800 MHz”.

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/146851/BT-EE.pdf

⁸ See https://www.ofcom.org.uk/_data/assets/pdf_file/0029/88337/Trading-guidance-notes.pdf

⁹ See [Three’s response](#) to the Auction Consultation, paragraph 5.4, page 48.

that it will permit partial transfers of the rights and obligations in relation to the use of the 3605-3689 MHz frequency band under the “Spectrum Access” licence that UK Broadband currently holds (which are not currently allowed under the General Trading Regulations).¹⁰

- 3.9 In our Auction Consultation (paragraphs A5.59), we said that we were not proposing to include leasing provisions in the new licences for 700 MHz and 3.6-3.8 GHz spectrum, but we would keep this position under review. In reaching a final view for the purposes of our final statement on the auction proposals, we will consider BT’s comments above. For the purposes of this statement, we note that the changes that we have decided to make to the General Trading Regulations and the Mobile Trading Regulations will not prevent us from extending leasing to the new licences for 700 MHz and 3.6-3.8 GHz spectrum, if we considered it appropriate in the future.
- 3.10 In light of the above, we have decided to proceed with the inclusion of the 700 MHz and 3.6-3.8 GHz bands within the Mobile Trading Regulations, including the frequencies in the 3.6-3.8 GHz band which are currently licensed to UK Broadband.

Updating references to payable fees in the Mobile Trading Regulations

- 3.11 In the January 2019 consultation, we also proposed to update references to the relevant regulations prescribing the licence fees payable by the holders of tradable licences to reflect:
- the changes introduced by The Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018¹¹; and
 - the changes that we are minded to make by The Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019, on which we have separately consulted.¹²
- 3.12 Having received no comments on these proposals, we have decided to implement them. However, the version of the proposed regulations on which we consulted contained a reference to “The Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019”, which we have not made yet. We have removed that reference from the final version of the regulations. We will update regulations 6(b) and 6(c) of the Mobile Trading Regulations once we have set the fees for the 3.4 GHz and the 3.6 GHz licences.

¹⁰ The Wireless Telegraphy (Spectrum Trading) Regulations 2012 do not permit partial transfers of the rights and obligations in relation to the use of the 3605-3689 MHz frequency band under the “Spectrum Access” licence that UK Broadband currently holds. Bringing the 3605-3689 MHz frequency band within The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 will also allow partial transfers in relation to this band.

¹¹ S.I. 2018/1368, as amended by S.I. 2019/127.

¹² See Ofcom’s consultation document of 17 December 2018, entitled “Annual Licence Fees for UK Broadband’s 3.4 GHz and 3.6 GHz spectrum” (Annex A6, in particular); <https://www.ofcom.org.uk/consultations-and-statements/category-2/annual-licence-fees-3.4-ghz-3.6-ghz-spectrum>

The Wireless Telegraphy (Register) (Amendment) Regulations 2019

- 3.13 Finally, in our January 2019 consultation we proposed to make The Wireless Telegraphy (Register) (Amendment) Regulations 2019, to allow the publication of certain information relating to the licences for the use of the 700 MHz and 3.6-3.8 GHz bands in the wireless telegraphy register.
- 3.14 The register 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.
- 3.15 Apart from BT/EE's comment that it is "content with all four Statutory instruments as drafted", we received no further comments on our proposals and decided to make these regulations as proposed.

4. (DRAFT) Regulatory impact assessment – Limitation order

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 (Limitation of Number of Licences) Order 2019, once we have made the regulations setting out the rules and procedures that Ofcom will apply in the auction for the 700 MHz and 3.6-3.8 GHz bands.

The Wireless Telegraphy (Limitation of Number of Licences) Order 2019

Introduction

- 4.1 The analysis set out in this document represents a regulatory impact assessment following Ofcom’s notice of proposals to make the Wireless Telegraphy (Limitation of Number of Licences) Order 2019 (the “**Limitation Order**”), published on 31 January 2019 (the “**January 2019 consultation**”).¹³
- 4.2 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

- 4.3 In Ofcom’s consultation of 18 December 2018 (the “**Auction Consultation**”), Ofcom set out its proposals to award national licences for spectrum in the 700 MHz and 3.6-3.8 GHz bands by means of an auction.
- 4.4 The Auction Regulations will set out the rules and procedures that Ofcom will apply in that auction. The Limitation Order that Ofcom has decided to make will complement the Auction Regulations.
- 4.5 In particular, the Limitation Order is intended to allow Ofcom to limit the number of users of the 700 MHz and 3.6-3.8 GHz bands through the award of licences, as opposed to exempting from licensing the use of radio equipment in these bands and so allowing an unlimited number of users. The purpose of limiting the number of users in this way is to secure efficient use of the electro-magnetic spectrum and efficient use, in particular, of the 700 MHz and 3.6-3.8 GHz bands.
- 4.6 The Limitation Order provides that, in determining the number of licences to be granted for the use of frequencies in the 700 MHz and 3.6-3.8 GHz bands and the

¹³ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

persons to whom the licences will be granted, Ofcom shall apply the procedure set out in the Auction Regulations.

Costs for Ofcom to consider

- 4.7 The costs to Ofcom of limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands relate mainly to the costs of carrying out the award process and clearance of the spectrum. Ofcom will make regulations – the Auction Regulations – to auction licences for the use of the 700 MHz and 3.6-3.8 GHz bands. The administrative costs of the award will be small in relation to the benefit generated to the economy, and society more generally. The award process is unlikely to have a negative financial impact.
- 4.8 There are costs of clearing the 700 MHz band of previous DTT (digital terrestrial television) users and of clearing the 3.6-3.8 GHz bands of previous fixed links and satellite users. However, in comparison with the likely consumer benefit of high speed mobile broadband services (which are the services most likely to be provided using this spectrum), we consider the costs are relatively small.
- 4.9 In comparison, licence exempt use of the band would mean that Ofcom would not incur auction costs. However, as discussed below, the cost to business is likely to be relatively high under licence exemption because of the need to incur coordination costs to limit interference with other users and this would be unlikely to lead to the most efficient use of the 700 MHz and 3.6-3.8 GHz bands.

Cost to business, including small businesses and the voluntary sector

- 4.10 The business sector most likely to be affected by the Limitation Order is the mobile communications service provision sector. The types of service most likely to be provided using frequencies in the 700 MHz and 3.6-3.8 GHz bands are high-speed mobile broadband services.
- 4.11 Other business sectors are likely to benefit from a more efficient supply of communications services as a result of this decision.
- 4.12 The decision to license the 700 MHz and 3.6-3.8 GHz bands, as opposed to making their use licence-exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. However, if the use of these bands were licence-exempt, it would not be possible to impose any constraint on the number of users to ensure that these users coordinated with each other. On 25 January 2018, Ofcom published a statement¹⁴ of its decision to limit the number of licences to be awarded in relation to the 2.3 GHz and 3.4 GHz bands, including a regulatory impact assessment of the Wireless Telegraphy (Limitation of Number of Licences) Order 2018. In that statement¹⁵, Ofcom said that Ofcom’s technical research had shown that if the use of the 2.3 GHz and 3.4 GHz bands were licence-exempt, this would impose large

¹⁴ Ofcom’s statement of 25 January 2018 entitled “Statement on the making of (i) a limitation order, and (ii) an amendment to the register regulations, in respect of the 2.3 and 3.4 GHz award”; see https://www.ofcom.org.uk/data/assets/pdf_file/0026/109790/limitations-order-registry-regulations.pdf

¹⁵ Paragraph 2.12.

costs due to interference between users, and that these costs would generally outweigh the benefits of licence exemption. We consider it reasonable to draw the same conclusions on the costs of licence exemption in 700 MHz and 3.6-3.8 GHz bands because the technologies used in these bands are the same as those used in the 2.3 GHz and 3.4 GHz bands.

- 4.13 Ofcom considers that the relative costs imposed on business by limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands are lower than the costs of making use of the spectrum licence exempt.
- 4.14 Ofcom does not consider that its decision to make the Limitation Order will have any material implications for the voluntary sector.

Conclusion

- 4.15 Ofcom has assessed the impact of limiting and not limiting the number of licences in the 700 MHz and 3.6-3.8 GHz bands and has concluded that the better option is to limit the number of licences. This is primarily because the number of users that would be likely to use the spectrum under licence exemption is large and would lead to all users incurring substantial costs in terms of interference and coordination with other users. Accordingly, the Limitation Order will be adopted so as to limit the number of licences awarded in respect of the 700 MHz and 3.6-3.8 GHz bands in accordance with the Auction Regulations.

Declaration

I have read this regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:

[signature]

[Philip Marnick]

[Group Director of Spectrum Group]

[For and by the authority of the Office of Communications]

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5. Regulatory impact assessment – Trading

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019 and The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019

Introduction

- 5.1 The analysis set out in this document represents a regulatory impact assessment following Ofcom’s notice of proposals to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019 (the “**MTA Regulations**”) and The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019 (the “**STA Regulations**”), both published on 31 January 2019 (the “**January 2019 consultation**”).¹⁶
- 5.2 Regulatory 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 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

- 5.3 In Ofcom’s consultation of 18 December 2018¹⁷, Ofcom set out its proposal to award national licences for spectrum in the 700 MHz and 3.6-3.8 GHz bands by means of an auction. Specifically, Ofcom intends to offer the following frequencies: 80 MHz within the 700 MHz band (i.e. 703-733 MHz and 738-788 MHz) and 120 MHz within the 3.6-3.8 GHz band (i.e. 3680-3800 MHz).
- 5.4 In the January 2019 consultation, we proposed to make two sets of regulations:
- a) The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019, to remove the following frequencies from the Schedule to The Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the “**General Trading Regulations**”):
 - i) 742–750 MHz and 758–766 MHz, which Ofcom intends to award by auction; and
 - ii) 3605–3689 MHz, which are currently licensed to UK Broadband, a wholly owned subsidiary of H3G¹⁸.

¹⁶ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

¹⁷ Ofcom’s consultation of 18 December 2018 entitled “Award of the 700 MHz and 3.6-3.8 GHz spectrum bands”; see <https://www.ofcom.org.uk/consultations-and-statements/category-1/award-700mhz-3.6-3.8ghz-spectrum?showall=1>

¹⁸ From 14 September 2019, UK Broadband will hold a block of 80 MHz starting from 3600 MHz (3600-3680 MHz), instead of a block of 84 MHz starting from 3605 MHz (3605-3689 MHz). See Ofcom’s statement of 14 December 2019, entitled “Variation of UK Broadband’s spectrum access licence for 3.6 GHz spectrum”; <https://www.ofcom.org.uk/consultations-and-statements/category-2/variation-uk-broadbands-spectrum-access-licence-3.6-ghz>

- b) The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019, to include these frequencies and the other frequencies within the 700 MHz and 3.6-3.8 GHz bands that Ofcom intends to award by auction¹⁹ within the Schedule to the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “**Mobile Trading Regulations**”).

Competition assessment

- 5.5 The purpose of the proposed regulations is to make all types of transfer of rights and obligations relating to a wireless telegraphy licence for the 700 MHz and 3.6-3.8 GHz bands (i.e. outright total transfers, concurrent total transfers, outright partial transfers and concurrent partial transfers) subject to the requirements of the Mobile Trading Regulations.
- 5.6 In particular, the effect of including these spectrum bands 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.

Partial transfers

- 5.7 The General Trading Regulations do not permit partial transfers of the rights and obligations in relation to the use of the 3605-3689 MHz frequency band under the “Spectrum Access” licence that UK Broadband currently holds. Bringing the 3605-3689 MHz frequency band within the Mobile Trading Regulations will also allow partial transfers in relation to this band.

Outstanding fees

- 5.8 Regulations 6(b) and 6(c) of the Mobile Trading Regulations currently refer to the fees payable under The Wireless Telegraphy (Licence Charges) Regulations 2011.²⁰ We proposed to update these provisions by adding references to any outstanding sum or any instalment payment due under the following statutory instruments:
- The Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018²¹; and

¹⁹ Specifically, we proposed to insert the frequency bands 703–733 MHz, 738–788 MHz and 3600–3800 MHz into the Schedule to the Mobile Trading Regulations. Since that Schedule already contained the frequency band “3410-3600 MHz”, we proposed to insert the frequency band 3600–3800 MHz by extending that band to “3410-3800 MHz”.

²⁰ S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334, 2015/1995, 2016/643 and 2018/1368.

²¹ S.I. 2018/1368, as amended by S.I. 2019/127.

- The Wireless Telegraphy (Licence Charges for the 3.4 GHz Frequency Band and the 3.6 GHz Frequency Band) Regulations 2019, on which we have separately consulted.²²

5.9 These changes would have the effect of updating the Mobile Trading Regulations so that failure to pay the fees payable for the licences for the 900 MHz, 1800 MHz, 3.4 GHz and 3.6-3.8 GHz spectrum on the due date, or the presence of any outstanding sum or instalment to be paid in relation to such fees, would continue to be circumstances where spectrum trade is not authorised.

5.10 However, since we have not yet made The Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019 that we proposed in December 2018, we have removed that reference from the final version of the MTA Regulations. We will update regulations 6(b) and 6(c) of the Mobile Trading Regulations once we have set the fees for the 3.4 GHz and the 3.6 GHz licences.

Ofcom's duties and policy objectives

5.11 Our principal duty under section 3 of the Communications Act 2003 (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. In so doing, we must, in particular, secure the optimal use for wireless telegraphy of the electro-magnetic spectrum and have regard to the principle under which all regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

5.12 In deciding whether to make the proposed MTA Regulations and the proposed STA Regulations, we have considered the wider impact beyond immediate stakeholders in the radiocommunications community. Specifically:

- a) we consider that our proposals would benefit consumers as they would have the effect of protecting competition in the mobile 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;
- b) we consider that our proposals would also ensure that a failure to pay the fees payable for the licences for 900 MHz, 1800 MHz, 3.4 GHz and 3.6-3.8 GHz spectrum on the due date, or the presence of any outstanding instalment to be paid in relation to such fees, would continue to be circumstances where the transfer of the rights and obligations arising from these licences is not authorised; and

²² See Ofcom's consultation document of 17 December 2018, entitled “Annual Licence Fees for UK Broadband's 3.4 GHz and 3.6 GHz spectrum” (Annex A6, in particular); <https://www.ofcom.org.uk/consultations-and-statements/category-2/annual-licence-fees-3.4-ghz-3.6-ghz-spectrum>

c) we consider that our proposals would also facilitate defragmentation of the 3.4-3.8 GHz band by allowing UK Broadband to agree partial transfers with the other operators.

5.13 In addition to the above-mentioned principal duty under the 2003 Act, we are required under EU law²³ to 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 under 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.

Costs for Ofcom to consider

5.14 There are one-off administrative costs associated with making statutory instruments. We consider these implementation costs to be low. Ofcom would incur little cost as a result of making the proposed regulations. The framework for spectrum trading has already been set up and some of the bands are already subject to the requirements of the General Trading Regulations. For us to include these bands, and other relevant bands, within the Mobile Trading Regulations should require little additional cost.

Cost to business, including small businesses and the voluntary sector

5.15 The business sector most likely to be affected is the mobile communications service provision sector. The types of service most likely to be provided using frequencies in the 700 MHz and 3.6-3.8 GHz bands are high-speed mobile broadband services. One aspect which is different between the General Trading Regulations and the Mobile Trading Regulations is that the Mobile Trading Regulations could lead to additional costs of supplying information as part of a licence transfer application. However, we believe these costs to be relatively minor and are required in order to fulfil our statutory duties.

5.16 As regards to costs to business more generally, Ofcom originally considered the benefits of spectrum trading in the regulatory impact assessment for the Spectrum Trading and Wireless Register Regulations 2004, published in 2004.²⁴ It concluded that the likely benefits of spectrum trading generally outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded and for whom the benefit of the spectrum trade should exceed the costs anyway. This analysis of the general benefits of introducing spectrum trading should also apply to the wireless telegraphy licences in the 700 MHz and 3.6-3.8 GHz bands.

²³ Article 5(6) of the Authorisation Directive.

²⁴ Annex 3 to Ofcom's statement of 2 December 2004 entitled "Spectrum Trading and Wireless Telegraphy Register Regulations"; see https://www.ofcom.org.uk/consultations-and-statements/category-3/spt_wtr

- 5.17 On 20 June 2011, Ofcom published a statement of its decision on the proposals to make the licences for 900, 1800 MHz and 2.1 GHz spectrum tradable.²⁵ This statement included a regulatory impact assessment of the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011, which gave effect to the decision. In its statements of 24 July 2002 and 19 March 2013, Ofcom considered that the same considerations apply to licences for the 800 MHz and 2.6 GHz spectrum since that spectrum will be used to provide the same or similar services to those provided using the 900, 1800 MHz and 2.1 GHz bands.²⁶ Likewise, in its statement of 29 March 2015, Ofcom considered that the same considerations apply to licences for the 2.3 GHz and 3.4 GHz spectrum.²⁷ Accordingly, the analysis in the regulatory impact assessment for the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 applies equally to the present Regulations.
- 5.18 In summary, Ofcom considers that the benefits of the inclusion of the 700 MHz and 3.6-3.8 GHz bands in the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 are likely to substantially outweigh the costs.
- 5.19 We do not consider that our decision to make these regulations will have any material cost implications for small businesses or the voluntary sector.

Conclusion

- 5.20 Ofcom has assessed the impact of allowing spectrum trading in the 700 MHz and 3.6-3.8 GHz bands and has found that the costs are not likely to outweigh the benefits for all types of transfer.

²⁵ Ofcom's statement of 20 June 2011 entitled "Statement on proposal to make 900 MHz, 1800 MHz and 2100 MHz public wireless network licences tradable"; see https://www.ofcom.org.uk/data/assets/pdf_file/0024/74652/900-1800-2100-statement.pdf

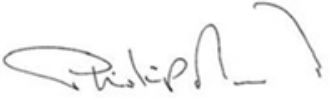
²⁶ See paragraph 9.23 of Ofcom's statement of 24 July 2012 entitled "Assessment of future mobile competition and award of 800 MHz and 2.6 GHz" and paragraph 4.10 of Ofcom's statement of 19 March 2013 entitled "Statement on the making of (1) spectrum trading regulations and (2) register regulations in connection with the award of 800 MHz and 2.6 GHz"; see <https://www.ofcom.org.uk/spectrum/spectrum-management/spectrum-awards/awards-archive/800mhz-2.6ghz>

²⁷ See paragraph A2.12 of Ofcom's statement of 29 March 2015 entitled "Inclusion of the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands in the Mobile Trading Regulations"; see <https://www.ofcom.org.uk/consultations-and-statements/category-3/mobile-trading-regs-apr-15>

Declaration

I have read this regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:

A handwritten signature in black ink, appearing to read 'Philip Marnick', enclosed in a thin black rectangular border.

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

Date: 20 May 2019

Contact point:

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6. Regulatory impact assessment – Register

The Wireless Telegraphy (Register) (Amendment) Regulations 2019

Introduction

- 6.1 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) Regulations 2019 (the “**Register Amendment Regulations**”), published on 31 January 2019 (the “**January 2019 consultation**”).²⁸
- 6.2 Regulatory 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 and are commonly used by other 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

- 6.3 In Ofcom’s consultation of 18 December 2018²⁹, Ofcom set out its proposals to award national licences for spectrum in the 700 MHz and 3.6-3.8 GHz bands by means of an auction.
- 6.4 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.
- 6.5 The Register Amendment Regulations would enable information about the licences in the 700 MHz and 3.6-3.8 GHz bands to be published in the Wireless Telegraphy Register. Except where security considerations prevent publication of information, this should 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.

Costs for Ofcom to consider

- 6.6 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published in December 2004), which established the Wireless Telegraphy Register.³⁰ Those regulations were subsequently amended on several occasions, and were replaced in 2012 with a consolidating set of regulations –

²⁸ <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>

²⁹ Ofcom’s consultation of 18 December 2018 entitled “Award of the 700 MHz and 3.6-3.8 GHz spectrum bands”; see <https://www.ofcom.org.uk/consultations-and-statements/category-1/award-700mhz-3.6-3.8ghz-spectrum?showall=1>

³⁰ Annex 4 to Ofcom’s statement of 2 December 2004, entitled “Spectrum Trading and Wireless Telegraphy Register Regulations”; https://www.ofcom.org.uk/consultations-and-statements/category-3/spt_wtr

the Wireless Telegraphy (Register) Regulations 2012 (the “**2012 Regulations**”)³¹ – for which Ofcom also carried out a regulatory impact assessment (published in September 2012).³²

- 6.7 The Register Amendment Regulations have the effect of amending the Wireless Telegraphy (Register) Regulations 2012 by adding the 700 MHz and 3.6-3.8 GHz bands to the Schedule of the 2012 Regulations.³³ The conclusions of the regulatory impact assessments for the Wireless Telegraphy (Register) Regulations 2004 and the 2012 Regulations on the costs and benefits of establishing a register also apply to these regulations. In summary, those conclusions were that the benefits of having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the Register Amendment Regulations will be even lower than the previous assessments because the register has been established and is maintained anyway. The additional costs to Ofcom would be minimal and would be limited to updating the register for the wireless telegraphy licences in the 700 MHz and 3.6-3.8 GHz bands. The regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 also noted that if a register were not established, there would be a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher and commercial providers might not bring the same benefits as an independent register.
- 6.8 Moreover, now that the register has been set up, additional costs of including the 700 MHz and 3.6-3.8 GHz bands within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Cost to business, including small businesses and the voluntary sector

- 6.9 The business sector most likely to be affected by the Register Amendment Regulations is the mobile communications service provision sector. The types of service most likely to be provided using frequencies in the 700 MHz and 3.6-3.8 GHz bands are high-speed mobile broadband services.
- 6.10 Ofcom does not consider that its decision to make the Register Amendment Regulations will have any material implications for business or the voluntary sector.

Conclusion

- 6.11 Ofcom’s assessment is that the benefits of including the 700 MHz and 3.6-3.8 GHz bands within the 2012 Regulations are likely to outweigh the costs. The benefits could

³¹ S.I. 2012/2186, amended by S.I. 2013/640, S.I. 2015/1400 and S.I. 2018/90.

³² Annex 1 to Ofcom’s statement of September 2012 entitled “Ofcom’s decision to make Wireless Telegraphy Trading and Register Regulations”; https://www.ofcom.org.uk/data/assets/pdf_file/0035/79739/tradingregister_statement.pdf

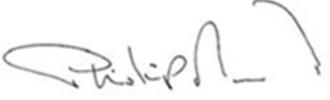
³³ We will offer two blocks of 700 MHz spectrum in the auction: (i) a block of 30 MHz at 703-733 MHz and a block of 50 MHz at 738-788 MHz. Since the table set out in Part 2 of Schedule 2 to the 2012 Regulations already contained some frequencies falling within the 738-788 MHz block (i.e. “742–750 MHz” and “758–766 MHz”), we proposed to extend the scope of the Regulations by replacing these references with “703-733 MHz” and “738-788 MHz”.

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.

Declaration

I have read this regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:

A handwritten signature in black ink, appearing to read 'Philip Marnick', enclosed in a thin black rectangular border.

Philip Marnick

Group Director of Spectrum Group

For and by the authority of the Office of Communications

Date: 20 May 2019

Contact point:

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A1. Draft statutory instrument – Limitation order

STATUTORY INSTRUMENTS

2019 No. [***]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Limitation of Number of Licences) Order 2019

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by sections 29(1) to (3) of the Wireless Telegraphy Act 2006(a) (the “Act”).

Before making this Order, 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, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2019 and shall come into force on * * *.

(2) This Order shall not extend to the Channel Islands and the Isle of Man.

Limitation of Licences

2.—(1) The Office of Communications (“OFCOM”) shall grant a limited number of wireless telegraphy licences for the use of the radio frequencies in the following frequency bands in the United Kingdom—

- (a) 703 to 733 megahertz;
- (b) 738 to 788 megahertz; and
- (c) 3680 to 3800 megahertz.

(2) In determining the number of licences to be granted for the use of the frequencies in these frequency bands and the persons to whom the licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2019(b).

Philip Marnick
Group Director of Spectrum Group

[Date * * *]

For and by the authority of the Office of Communications

(a) 2006 c.36.
(b) S.I. 2019/* * *.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the radio frequencies for which the Office of Communications (“OFCOM”) will grant wireless telegraphy licences.

Article 2(1) provides that a limited number of licences will be granted for the use of frequencies in the specified frequency bands. Article 2(2) sets out the criteria that OFCOM will apply in determining the limit on the number of licences and the persons to whom the licences will be granted.

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

A2. Draft statutory instrument – General trading regulations

STATUTORY INSTRUMENTS

2019 No. 950

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019

Made - - - - *20th May 2019*

Coming into force - - *10th June 2019*

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(a) (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 (Spectrum Trading) (Amendment) Regulations 2019 and shall come into force on 10th June 2019.

Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2012

2. Schedule 2 to the Wireless Telegraphy (Spectrum Trading) Regulations 2012(b) is amended as follows:

- (a) in the table in Part 11, delete the words “742–750 MHz” and “758–766 MHz” in Column 2; and
- (b) in the table in Part 14, delete the words “3605–3689 MHz” in Column 2.

Philip Marnick

Group Director of Spectrum Group

For and by the authority of the Office of Communications

20th May 2019

(a) 2006 c.36.
(b) S.I. 2012/2187, amended by S.I. 2015/1338.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Spectrum Trading) Regulations 2012 (S.I. 2012/2187, amended by S.I. 2015/1338) by removing the reference to the frequency bands 742–750 MHz, 758–766 MHz and 3605–3689 MHz in Schedule 2.

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

A3. Draft statutory instrument – Mobile trading regulations

STATUTORY INSTRUMENTS

2019 No. 951

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019

Made - - - - *20th May 2019*

Coming into force - - *10th June 2019*

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(a) (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) Regulations 2019 and shall come into force on 10th June 2019.

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

2. The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011(b) (the “principal Regulations”) shall be amended in accordance with these Regulations.

Amendment to regulation 6

3. In regulation 6 of the principal Regulations—

- (a) for paragraph (b) substitute—

“(b) any sum payable in respect of that licence under—

- (i) the Wireless Telegraphy (Licence Charges) Regulations 2011(c); or
- (ii) the Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018(d)

is owing to OFCOM because it has not been paid by the time it became due;”;

(a) 2006 c.36.

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

(c) S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334, 2015/1995 and 2016/643.

(d) S.I. 2018/1368, as amended by S.I. 2019/127.

(b) for paragraph (c) substitute—

“(c) any instalment payment is to be paid to OFCOM in respect of that licence under—

- (i) regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2011; or
- (ii) regulation 6(1)(b) of the Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018”.

Amendment to the Schedule

4. For the Schedule to the principal Regulations substitute—

“SCHEDULE Regulations 4 and 5 Licence Classes and Frequency Bands

<i>Column 1</i>	<i>Column 2</i>
<i>Licence Classes</i>	<i>Frequency bands</i>
Public Wireless Network	703–733 MHz
Spectrum Access	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”.

Philip Marnick

Group Director of Spectrum Group

20th May 2019

For and by the authority of the Office of Communications

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (S.I. 2011/1507, amended by S.I. 2013/646 and S.I. 2015/1339) to include the frequency bands 703–733 MHz, 738–788 MHz and 3600–3800 MHz in the Schedule and to add a reference in regulations 6(b) and 6(c) to the Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018 (S.I. 2018/1368, as amended by S.I. 2019/127).

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from OFCOM at Riverside House, 2A Southwark Bridge Road, London, SE1 9HA (Tel. 020 7981 3000) and on OFCOM’s website at www.ofcom.org.uk. Copies of this assessment have also been placed in the library of both Houses of Parliament.

A4. Draft statutory instrument – Register

STATUTORY INSTRUMENTS

2019 No. 952

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Register) (Amendment) Regulations 2019

Made - - - - *20th May 2019*

Coming into force - - *10th June 2019*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 31(1) and (2) and 122(7) of the Wireless Telegraphy Act 2006(a) (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 (Register) (Amendment) Regulations 2019 and shall come into force on 10th June 2019.

Amendment of the Wireless Telegraphy (Register) Regulations 2012

2. In Column 2 of Part 2 of Schedule 2 to the Wireless Telegraphy (Register) Regulations 2012(b)—

- (a) for “742–750 MHz”, substitute “703–733 MHz”;
- (b) for “758–766 MHz”, substitute “738–788”;
- (c) for “3410–3600”, substitute “3410–3800”; and
- (d) delete “3605–3689”.

20th May 2019

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

(a) 2006 c.36.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wireless Telegraphy (Register) Regulations 2012 (S.I. 2012/2186, amended by S.I. 2013/640, S.I. 2015/1400 and S.I. 2018/90), which require the Office of Communications (“OFCOM”) to establish and maintain a public register of relevant information relating to certain classes of wireless telegraphy licences and grants of recognised spectrum access.

These Regulations add licences in respect of wireless telegraphy stations operating within certain frequency bands.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from OFCOM’s library at Riverside House, 2A Southwark Bridge Road, London, SE1 9HA (Tel. 020 7981 3000) and on OFCOM’s website at www.ofcom.org.uk. Copies of this assessment have also been placed in the library of both Houses of Parliament.