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# Trading Guidance Notes

OfW513

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## About this document

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This document provides guidance on the process for applying for a spectrum trade or, where eligible, applying for permission to lease the rights to use spectrum. Application forms are available for these processes and further information such as confirmation of licensing status for the purpose of 'due diligence' can be made available on request.

Licences granted under the Wireless Telegraphy Act 2006 may not be transferred. The rights and obligations conferred by a licence may however be transferred to another party under regulations made by Ofcom and this process is known as Spectrum Trading.

Spectrum trading is available to most (although not all) classes of WT Act licence and in the case of spectrum for mobile services, may be subject to a competition assessment before a trade can be authorised. Spectrum leasing (the sub-letting of licence rights to third parties) is available only to certain classes of licence and a licence variation is required in order to grant permission for leasing to be offered.

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# 1. Introduction

- 1.1 These guidance notes provide a guide to spectrum trading and Ofcom's spectrum trading processes. They serve as a first port of call for those who want to understand the possibilities of trading (both transfer and leasing) Wireless Telegraphy Act 2006 ('WT Act') licences.
- 1.2 A range of documents providing background to our policies on spectrum trading and other information that would be helpful to those interested in trading is available from the spectrum trading folder on the Radiocommunications licences<sup>1</sup> page of our website.
- 1.3 The regulations and legislation relating to spectrum trading are available at <http://www.legislation.gov.uk/> and some licences, if eligible, may contain provisions for spectrum leasing which is a form of trading. The regulations, legislation or licence take precedence if anything in this guidance is inconsistent with them.
- 1.4 If you have specific questions about spectrum trading that are not answered by these guidance notes, please contact the **Spectrum Trading Desk** on **020 7981 3083** or email [spectrum.tradingdesk@ofcom.org.uk](mailto:spectrum.tradingdesk@ofcom.org.uk).

## What is spectrum trading

- 1.5 Spectrum trading is a process that allows the holders of certain wireless telegraphy licences granted by us under section 8 of the WT Act to transfer or lease the rights to use spectrum to another party. It is permitted only for those licences where Ofcom has made regulations under section 30 of the WT Act. Most, but not all, licences are tradable. Please check this guidance, the regulations mentioned in it and your licence before proceeding.

## Who can trade spectrum

- 1.6 There are no restrictions on who may apply to participate in a trade for any currently tradable licences.
  - i) *Trade*: anyone with an eligible licence.
  - ii) *Purchase*: anyone eligible to apply for a licence.

## Forms of spectrum trading

### Spectrum transfer

- 1.7 The transfer of rights and obligations for most licences are regulated by the [Wireless Telegraphy \(Spectrum Trading\) Regulations 2012](#), as amended (referred to here as the 'Trading Regulations')<sup>2</sup>. The Trading Regulations set out the classes of licences for which spectrum may be traded and the process to be followed. You may transfer all or part of your licence rights and associated obligations to another party (referred to in this guidance

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<sup>1</sup> <https://www.ofcom.org.uk/manage-your-licence/radiocommunication-licences>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2012/2187/made/data.pdf>

as 'transfer') in accordance with trading regulations as explained in section 2 of this guidance *provided that your licence is in a class covered by the regulations*.

- 1.8 The transfer of rights and obligations for Public Wireless Network (PWN) and some Spectrum Access licences is regulated separately by the [Wireless Telegraphy \(Mobile Spectrum Trading Regulations 2011](#), as amended (referred to here as the 'Mobile Trading Regulations')<sup>3</sup>. These are broadly similar to the general Trading Regulations but include some provisions specific to mobile trades as described in section 2 of this guidance.
- 1.9 Transfers may be permanent or time-limited. A time-limited transfer will involve reversal of the original transaction by the transferee. An obligation on the transferee to reverse the transaction at the agreed time may be included in a contract subject, in some cases (such as for mobile trading), to any requirements set out in regulations.

## Leasing

- 1.10 If your licence contains the necessary provisions to permit spectrum leasing, you may enter into a contract to let someone else exercise your rights to use the spectrum. Leasing is governed by licence terms and conditions and the licensee remains responsible for ensuring compliance. A licence-holder may grant leases only if the licence contains the necessary terms and conditions, as described in section 3 of this guidance, and it may be necessary for you to apply for a licence variation before granting leases. Further details are given in section 3.

## Recognised Spectrum Access

- 1.11 There is a further trading process, not described in this guidance, for spectrum held by Crown bodies such as government departments and other services (such as receive only stations) that cannot be licensed by Ofcom. For legal reasons, Crown bodies hold spectrum in the form of Recognised Spectrum Access (RSA) rather than a WT licence and the trading process is slightly different. The transfer of RSA authorisations do not fall under the Trading Regulations but are subject to the [Wireless Telegraphy \(Recognised Spectrum Access and Licence\)\(Spectrum Trading\) Regulations 2009](#), as amended (the 'RSA Trading Regulations')<sup>4</sup>.

## What is the difference between transfer and lease

- 1.12 The main difference between transfer and lease is that the under a transfer the licensee gives up all rights and obligations to the spectrum being traded, the new
- 1.13 Table 1 summarises the chief differences. As illustrated in Figure 1, transfer involves the notification of Ofcom and the grant by us of a new licence to the purchaser (and the simultaneous revocation of the rights being traded) whereas leasing is a contractual matter between the parties and does not involve us.

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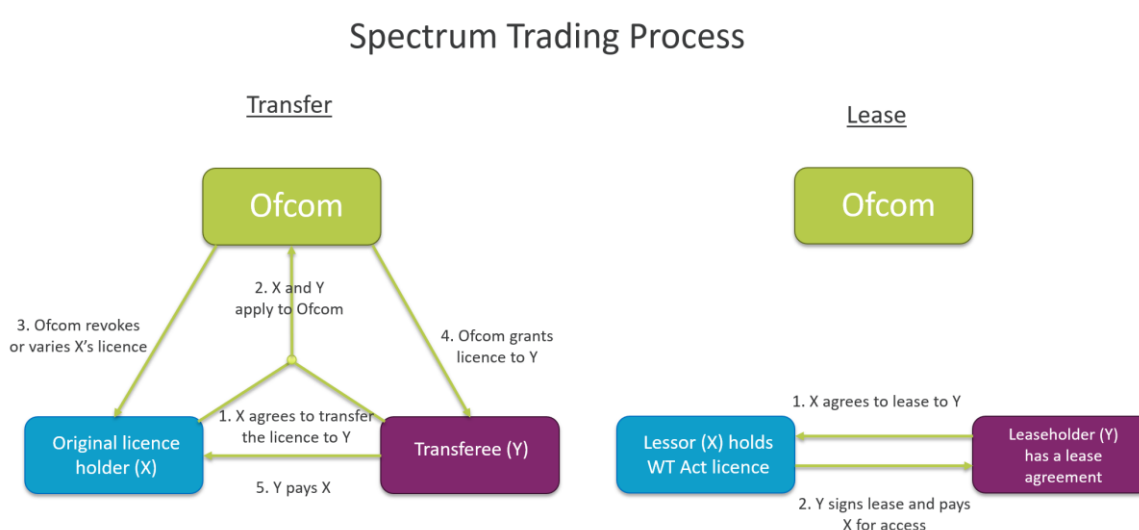
<sup>3</sup> <http://www.legislation.gov.uk/uksi/2011/1507/made/data.pdf>

<sup>4</sup> [Wireless Telegraphy \(Recognised Spectrum Access and Licence\) \(Spectrum Trading\) Regulations 2009](#)

**Table 1: Chief differences between transfer and lease**

Transfer	Lease
Involves the original licence holder giving up their existing spectrum rights. The process requires Ofcom’s involvement to issue the new licence.	The original licensee continues to be licensed to use the spectrum. Providing the licensee already has the leasing clause in their licence Ofcom is not involved in the process.
Both parties hold their own licences from Ofcom that authorise use of the spectrum.	Leaseholder is not granted its own licence but derives authorisation to use spectrum from the lease.

**Figure 1: Difference between transfer and lease**



1.14 Further background information on these two forms of trading may be found in sections 2 and 3.

## How is the price of traded spectrum determined

1.15 As with other tradable commodities, the terms on which spectrum trades take place, including price, are a matter for commercial negotiation between the parties.

## Do I have to trade if my licence is in a tradable licence class

1.16 No. Spectrum trading is entirely voluntary. Being able to trade a WT Act licence is a right of a licence holder; it is not an obligation.

## Which licence classes may be traded and how

1.17 Section 2 summarises the position for transfer and Section 3 deals with leasing.

## **Will transfer or lease suit the parties better**

- 1.18 The choice between transfer and lease will depend on the parties' circumstances and preferences and is for them to decide, assuming as appropriate that the licence is of a type that may be transferred and/or contains terms that allow leasing.

## 2. The transfer process

### Which licence classes may be transferred

2.1 The majority of licences issued by Ofcom are now tradable by transfer as listed in Table 2 with the types of transfer permitted for each.

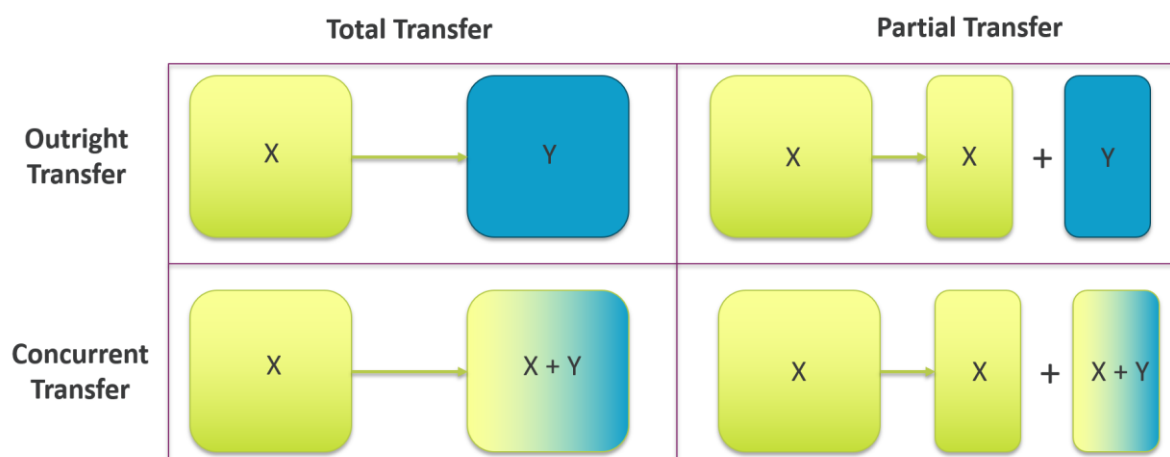
### What types of transfer are possible

2.2 The Trading Regulations offer the parties various options as to how to structure transactions. Transfers may be:

- outright or concurrent; and
- total or partial.

2.3 Figure 2 illustrates the four possible combinations.

Figure 2: Types of transfer



### What is the difference between outright and concurrent transfers

2.4 In an *outright* transfer, the rights and obligations of the person making the transfer become the rights and obligations of the transferee to the exclusion of the person making the transfer. After such a transfer, the original licensee (that traded the licence) no longer has any rights and/or obligations under the traded licence.

2.5 In a *concurrent* transfer, 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. Such a transfer enables licensees to share rights to use spectrum. The number of concurrent licence holders is not limited in the regulations, and so joint holdings by three or more licensees might be possible.

2.6 Where a licence is held concurrently by a number of licensees, the consent of all those licensees to the transfer will be necessary to complete a trade.

2.7 The Trading Regulations and Mobile Trading Regulations authorise both outright and concurrent transfers, however noting that concurrent and partial transfers are not permitted for some licence classes.



## What is a ‘partial transfer’

- 2.8 As well as allowing parties to trade all the rights and obligations under a licence, the transfer of only a portion of the rights and obligations may be permitted in certain cases. This will result in the rights and obligations under the licence being partitioned (divided) into two distinct licences. The rights to use spectrum can be partitioned by frequency, geography or time.

## What types of transfer are allowed in which licence classes


- 2.9 The transfer options available depend on the licence class as summarised in Table 2 below.


**Table 2: Licences that are tradable and types of transfer allowed**

Licence sector	Licence class/frequency (area)	Types of Transfer	
		Outright or concurrent	Total or partial
Business Radio	<i>Technically Assigned</i>	Fully flexible	Semi-flexible
	<i>Area Defined</i>	Fully flexible	Semi-flexible
	<i>Light Licensing comprising:</i> <ul style="list-style-type: none"> <li>• <i>Simple UK</i></li> <li>• <i>Simple Site</i></li> <li>• <i>Suppliers</i></li> </ul>	Fully flexible	Total only
Maritime	<ul style="list-style-type: none"> <li>• <i>Coastal Station Radio (UK)</i></li> <li>• <i>Coastal Station Radio (International)</i></li> <li>• <i>Coastal Station Radio (UK) Area Defined</i></li> <li>• <i>Coastal Station Radio (International) Area Defined</i></li> </ul>	Fully flexible	Semi-flexible
	<ul style="list-style-type: none"> <li>• <i>Coastal Station Radio (Marina)</i></li> <li>• <i>Coastal Station Radio (Training School)</i></li> <li>• <i>DGPS</i></li> <li>• <i>Maritime Radio (Suppliers and Demonstration)</i></li> </ul>	Fully flexible	Total only
Satellite	<ul style="list-style-type: none"> <li>• <i>Permanent Earth Station (PES)</i></li> <li>• <i>Transportable Earth Station (TES)</i></li> </ul>	Fully flexible	Semi-flexible


	<ul style="list-style-type: none"> <li>• <i>Satellite Earth Station Network</i></li> <li>• <i>Satellite (Earth Station)(Non-Fixed Satellite Service)</i></li> <li>• <i>Satellite (Earth Station)(Non-Geostationary Satellite Service)</i></li> </ul>	Fully flexible	Total only
	<i>Satellite (complementary Ground Components of a Mobile Satellite System)</i>	Concurrent only	Total only
	<i>Global Navigation Satellite System (GNSS) Repeaters</i>	Fully flexible	Total only
Spectrum Access	3605-4009 MHz	Fully flexible	Total only
Spectrum Access	412-414 with 422-424 MHz 542-550 MHz (Cardiff) 758-766 MHz (Manchester) 790-862 MHz 880-960 MHz (Public Wireless Networks) 1452-1492 MHz 1710-1876.7 MHz 1785-1805 MHz (NI) 1899.9-2170 MHz 2350-2390 MHz 2500-2690 MHz 3410-3600 MHz 10, 28, 32, 40 GHz	Fully flexible	Fully flexible
Concurrent Spectrum Access	1781.7-1785 with 1876.7-1880 MHz	Outright only	Total only
Fixed Services	<i>Scanning Telemetry</i>	Fully flexible	Semi-flexible
	<i>Point to Point Fixed Links</i>	Fully flexible	Semi-flexible
	<i>Self co-ordinated Links</i>	Fully flexible	Semi-flexible
Science and Technology	<i>High Duty Cycle Network Relay Points</i>	Fully flexible	Total only

**Key:**

 Fully flexible: *trades may be either of the types specified at the top of the column with no restriction on partitioning by geography or frequency*

 Restricted: *trades may be of one type only and no partitioning is permitted*

 Semi-flexible: *partial trades restricted by geography and/or frequency as in Table 3*

 Restricted: *concurrent or partial trades not permitted*

\*Note – transfer of licences covered by Mobile Trading Regulations and may be subject to a competition assessment requiring Ofcom’s consent before approving.

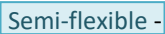

2.10 Information on tradable licence classes that may be traded by transfer can be found in the appropriate trading regulations or through our on-line Spectrum Information System<sup>5</sup>.

## What kind of partial transfers are allowed and in which licence classes

2.11 The conditions that govern the forms of partial transfer that are allowed in various frequency bands and licence types are set out in the various trading regulations.

2.12 As shown in Table 3 below, not all types of licence can currently be partitioned and partial trades are restricted in some licence classes, for example by requiring the frequencies to be transferred in multiples of a certain bandwidth. These restrictions are necessary to ensure that partitioning of licences does not result in increased interference. We keep the need for them under review.

**Table 3: Types of partial transfers allowed**

Type of partitioning	Licence class <i>and any restrictions on partitioning</i>
Partitioning by frequency	<p> <i>restrictions apply as below</i></p> <p>Business Radio Technically Assigned and Coastal Station Radio (UK) - <i>spectrum segmentation to a minimum channel width of 6.25 kHz (subject to clearance by Ofcom and prior licence variation)</i></p> <p>Business Radio Area Defined and Coastal Station Radio (UK) Area Defined - <i>spectrum segmentation to a minimum channel width of 6.25 kHz (subject to clearance by Ofcom and prior licence variation)</i></p> <p>Fixed Service Point to Point Fixed Links – <i>spectrum segmentation (subject to clearance by Ofcom and prior licence variation).</i></p> <p>Fixed Service Scanning Telemetry – <i>spectrum segmentation to 12.5 kHz</i></p> <p> <i>may be segmented in any way</i></p> <p>Spectrum Access:</p> <ul style="list-style-type: none"> <li>• 412-414/422-424 MHz</li> </ul>

<sup>5</sup> <https://www.ofcom.org.uk/spectrum/information/spectrum-information-system-sis>

	<ul style="list-style-type: none"> <li>• 542-550 MHz (Cardiff)</li> <li>• 758-766 MHz (Manchester)</li> <li>• 790-862 MHz</li> <li>• 880--960 (Public Wireless Networks)</li> <li>• 1452-1492 MHz</li> <li>• 1710-1876.7</li> <li>• 1785-1805 MHz (NI)</li> <li>• 1899.9-2170 MHz</li> <li>• 2500-2690 MHz</li> <li>• 3410-3600 MHz</li> <li>• 10 GHz</li> <li>• 28 GHz</li> <li>• 32 GHz</li> <li>• 40 GHz</li> </ul>
<p>Partitioning by geography</p>	<p><b>Semi-flexible</b> - restrictions apply as below</p> <p>Business Radio Technically Assigned, Coastal Station Radio (UK), Coastal Station Radio (International), Permanent Earth Station and Transportable Earth Station – <i>partial transfer of individual assignments where licence covers more than one assignment</i></p> <p>Business Radio Area Defined, Coastal Station Radio (UK) Area Defined and Coastal Station Radio (International) Area Defined – <i>partial transfer of individual assignments where licence covers more than one assignment and by geographical segmentation down to a minimum trading unit 50 km grid square</i></p> <p>Scanning Telemetry and Self Co-ordinated links - <i>partial transfer of whole individual links</i></p> <p><b>Fully flexible</b> - may be segmented in any way</p> <p>Public Wireless Network:</p> <ul style="list-style-type: none"> <li>• 880-915</li> <li>• 925-960</li> <li>• 1710-1781.7</li> <li>• 1805-1876.7</li> </ul> <p>Spectrum Access:</p> <ul style="list-style-type: none"> <li>• 412-414/422-424 MHz</li> <li>• 542-550 MHz (Cardiff)</li> <li>• 758-766 MHz (Manchester)</li> <li>• 790-862 MHz</li> <li>• 1452-1492 MHz</li> </ul>

	<ul style="list-style-type: none"> <li>• 1785-1805 MHz (NI)</li> <li>• 1899.9-1980</li> <li>• 2110-2170 MHz</li> <li>• 2500-2690 MHz</li> <li>• 3.480-3.600 GHz</li> <li>• 10 GHz</li> <li>• 28 GHz</li> <li>• 32 GHz</li> <li>• 40 GHz</li> </ul>
Partitioning not permitted	<p><b>Restricted</b></p> <p>Business Radio Light Licences comprising:</p> <ul style="list-style-type: none"> <li>• Simple UK • Simple Site • Suppliers</li> </ul> <p>Maritime licences comprising:</p> <ul style="list-style-type: none"> <li>• Marina • Training School • Suppliers &amp; Demonstration</li> <li>• DGPS</li> </ul> <p>Satellite comprising:</p> <ul style="list-style-type: none"> <li>• Earth Station Network • GNSS Repeater • Non-Fixed Satellite Service • Non-geostationary Satellite Service</li> </ul> <p>Concurrent Spectrum Access 1781.7-1785/1876.7-1880 MHz</p> <p>Spectrum Access: 3.6 GHz</p> <p>Science &amp; Technology:</p> <ul style="list-style-type: none"> <li>• High Duty Cycle Network Relay Points</li> </ul>

## In future, will Ofcom allow other types of trading transaction

2.13 Provided that new types of transfer can be accommodated within the Trading Regulations and there is sufficient evidence of the benefits, we may consider amending the Trading Regulations to authorise additional types of transfer.

## What if a company holding a WT Act licence changes its name

2.14 As long as the Company Registration Number remains unchanged, the licence is not traded. The original licence remains valid until such time as a revised licence document is requested from Ofcom.

## What if a company holding a WT Act licence is taken over by another company

2.15 A licensee that is a corporate entity and is taken over (e.g. by way of share purchase) will not have to apply to us for a transfer as there is no change in the identity (i.e. Company Registration Number) of the licensee. However, where spectrum is to be transferred from

one registered company to another, even within the same corporate group, a spectrum trade is necessary in order to transfer the licence rights to the recipient.

## Is it possible to carry out time-limited transfers

2.16 Yes, although it is necessary to structure this as two separate transactions. The parties enter into a contract requiring the transferee to reverse the transaction at the end of the transfer period subject, in some cases (e.g. mobile trading), to any requirements set out in regulations. If allowed by your licence, leasing (see below) provides an alternative way of executing time-limited trades.

## How do I apply for a transfer

- 2.17 This depends upon the type of transfer you are applying for as explained below.
- 2.18 To apply for an outright transfer (without specifying a completion date), please complete Ofcom application form OfW437 “Application for Spectrum Trading (Outright Transfer)”.
- 2.19 For all other types of transfer or for an outright transfer with a scheduled completion date, please complete Ofcom application form OfW206 “Application for Spectrum Trading”.
- 2.20 Please email your completed form to the Spectrum Trading Desk or send by post to the address indicated on the form.

## What happens during the transfer process

- 2.21 Holders of WT Act licences are, where provided for by regulations, allowed to transfer their licence rights and obligations under them to others on terms agreed commercially between them.
- 2.22 The basic steps in the transfer process are as follows:
- i) The licence holder submits the appropriate trading application form signed by the transferee and transferor (and any concurrent licensees);
  - ii) We assess the information provided on the form and consider whether we require further information in order to be able to
    - process the trade; and
    - assess relevant competition issues (applicable only to a transfer of rights involving PWN, RSA, Converted Spectrum Access (CRSA) and some Spectrum Access licence products)<sup>6</sup>;
  - iii) We publish a notice setting out basic details of the proposed transfer on the trade notification register (TNR);
  - iv) We check that none of the circumstances in which transfers are not authorised apply;

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<sup>6</sup> Any requirement for Ofcom to consider competition aspects of a proposed trade will be set out in the relevant trading regulations for the spectrum / licence product in question.

- v) For transfers of rights involving *PWN, RSA, CRSA and some Spectrum Access* licence products we consider and determine:
  - whether or not conduct a competition assessment;
  - whether or not to consent to the trade; and
  - if we give consent, whether or not to issue a direction requiring matters to be done before the transfer is put into effect;
- vi) If a trade is refused, we will make clear the grounds on which we have withheld consent.
- vii) We inform the parties to the transfer when we are ready to finalise the trade, including where relevant any decision about consent and directions.
- viii) The transfer is executed. The original licence holder surrenders the licence to us and we issue a new licence or new licences to reflect the terms of the trade.
- ix) The status of the trade is updated in the TNR.

## What information do I need to submit

- 2.23 Trading application forms are, available on the trading and liberalisation homepage.
- 2.24 Once the commercial details of a transaction have been agreed between the parties, the licence holder (or holders in the case of a concurrent licence) must submit the appropriate completed application form to our Spectrum Trading Desk. The form requests certain basic information required under the trading regulations and we will advise if additional information is required.

## Why might we ask for additional information

- 2.25 We may request additional information in order to monitor the effects of spectrum trading. This may include details of the underlying commercial transaction, including information on price.

## Does Ofcom charge a fee for the transfer process

- 2.26 We do not currently charge a fee for processing transfers although this may be subject to future review.

## When do we publish a notice about the proposed transfer

- 2.27 After checking the documentation, we publish a notice on the TNR, stating the names of the transferor and the transferee and setting out basic information about the licence to be transferred. The status of the transfer on the TNR will be updated as the trade progresses.

## What happens to the licence fees when the rights are transferred

- 2.28 A licence transfer should trigger neither the payment of additional licence fees nor the repayment to a transferor of any fees already paid. The rights transferred under a licence will include the transferor's rights which arise from having paid a licence fee and the fee payment date will remain the same as set out on the licence being traded.

- 2.29 The regulations require that all licence fees which are owed are paid in full before a transfer can take place. Where fees are paid in staged payments<sup>7</sup>, all remaining instalments must be paid in full.

### May I schedule transfers to take place on a set date

- 2.30 It is possible to request a particular date on which you wish a trade to become effective in the appropriate box on the relevant trading application form. The date specified should be a working day and must fall between 42 calendar days and 3 months from the date of application.
- 2.31 We cannot guarantee meeting any particular date since timing will depend on any issues that arise from the transfer application. If the exact date when a transfer is to be put into effect is of significance to parties or is less than 42 days, we recommend that you contact the Spectrum Trading Desk.

### What happens to my old licence

- 2.32 In executing a transfer, the transferor's original licence will need to be surrendered. In the case of a total transfer, it will be cancelled. In the case of a partial transfer, it will be varied to reflect the transfer and re-issued.

### Under what circumstances are transfers not authorised

- 2.33 Trading Regulations set out the circumstances in which transfers are not authorised, including:
- where any or all of the (concurrent) licence holder(s) and the transferee have not consented to the transfer. All of the parties must consent to the transfer. We will require the parties to a trade to provide us with documentary evidence of that consent (normally the relevant trading application form);
  - where licence fees (including any instalments) are outstanding, the licence-holder should contact us and pay the balance owing;
  - where we have served notice of a proposal to revoke a licence (under schedule 1 paragraph 7 of the WT Act 2006) (see section 4 below on 'due diligence'); or
  - where a licence revocation or variation has been either requested by the licensee or proposed by us and implementation has not been concluded;
  - For licences covered by the Mobile Trading Regulations or RSA Trading Regulations, where we have not consented to a transfer being made.

### For what reasons may Ofcom not consent to a proposed transfer

- 2.34 For most licence classes we do not need to consent to a transfer of rights of use. However, for PWN, RSA, CRSA and for some Spectrum Access licence classes, which fall under the Mobile or the RSA Trading Regulations, these continue to require our consent before any transfer can be authorised.

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<sup>7</sup> Criteria for staged payment eligibility are set out in the current fee regulations



- 2.35 In determining whether or not to consent to a proposed transfer, the Regulations require us to take into account 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 partial transfer, the transferor will be 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 eligibility criteria relating to the class of wireless telegraphy licence to be transferred;
  - it is requisite or expedient to refuse consent to the transfer –
    - in the interests of national security;
    - for the purposes of complying with an international (including EU) obligation or any international agreement or arrangement; or
    - for the purposes of complying with a direction from the Secretary of State; and
    - in the case of trades that fall under the Mobile Trading Regulations, competition is likely to be distorted as a result of the transfer.

### **What is the process for providing consent and assessing competition issues for trades covered by the Mobile Trading Regulations**

- 2.36 Parties are encouraged to approach us for informal discussion about the process we will undertake to assess the proposed transfer, in particular if they think that it may raise competition issues.
- 2.37 Regulation 7(1)(f) of the Mobile Trading Regulations requires the licensee to provide all information necessary for Ofcom to determine whether or not to consent to the transfer. We would expect the licensee to provide with its trading application any information it considered relevant to a competition check. This might include the following:
- nature of the spectrum to be transferred;
  - current spectrum holdings of the trading parties and of other mobile spectrum licensees;
  - services and technologies the spectrum to be transferred is likely to support;
  - how the spectrum is currently being used;
  - contractual obligations attached to the spectrum to be transferred.
- 2.38 This list is not exhaustive and the information we require will be tailored to the specific circumstances.

#### **Initial competition assessment**

- 2.39 When we publish details of a proposed transfer on the TNR, we will publish an Ofcom update that will invite interested parties to submit representations about the proposed transfer within 10 working days.
- 2.40 We will undertake an initial assessment of whether the proposed transfer raises sufficient competition issues to justify further analysis. This will involve:

- assessing the information that the parties provide with the application;
- requesting, if necessary, further information or clarification from the parties;
- considering whether there is a possible distortion of competition that needs assessing (including any representations from third parties); and
- notifying trading parties of our decision on whether to undertake a competition assessment.

2.41 We aim to complete this part of the transfer process within 20 working days of publication of details in the TNR.

### Further competition assessment process

2.42 If we decide to undertake a competition assessment, we will ask the parties to provide their analysis and evidence for believing that the trade should be approved. We will also invite further comments from third parties. Responses will be required within 10 working days. The competition assessment process will usually involve the following:

- providing the trading parties with a statement of the issues we consider need to be addressed, including issues raised by third parties;
- an opportunity for the trading parties to comment on the issues raised;
- meeting the trading parties to discuss the issues and, if necessary, with third parties to discuss their concerns;
- an assessment of the potential of the transfer to distort competition, which will usually take account of:
  - the potential impact of the transfer on competition, which, depending on the circumstances, might include the possible impact on prices, on service quality and on innovation;
  - possible changes to the competition landscape arising from the trade;
  - likely prospects for competition with and without the trade; and
  - efficiencies and other benefits, including for citizens and consumers, that might arise from the trade;
  - a provisional decision by Ofcom on whether to consent to the transfer. In determining whether to consent there are a number of other matters that we may consider;
  - informing the trading and other interested parties of our provisional decision, including our reasoning, and assessing any representations that are made within 10 working days;
  - informing the trading parties of our final decision and any conditions that apply to our consent or our grounds for refusal if we refuse consent; and
  - publishing our decision and reasons.

### Might we make our consent to a transfer conditional

2.43 In the Mobile Trading Regulations and RSA Trading Regulations we may make our consent conditional upon compliance by the parties with a direction from us concerning any of the consent matters mentioned in the regulations.

## How long does it take to give consent to a proposed trade

- 2.44 We have not set a rigid timescale as the time taken will depend on the complexity of the case and other circumstances. However, we aim to complete ordinary trades (measured from the day the proposed transfer is received by the Trading Desk, to the day the transfer is executed or rejected) within 42 calendar days.

## How long will it take to assess a Mobile trade

- 2.45 We aim to complete initial competition assessments within 42 calendar days although some cases may take longer. Further competition assessments are likely to take up to four months but may take longer depending on complexity.

## Where can I access information about tradable spectrum licences

- 2.46 We publish a number of online databases in order to provide as much relevant information to the market as possible. These registers are accessible on our online Spectrum Information System (SIS)<sup>8</sup>.
- 2.47 The SIS provides a range of information about spectrum licences and authorisations that is useful to spectrum users interested in trading. The system has been designed to facilitate access to a wide range of detailed information in a simple and accessible way.

## What information can I find on the SIS

- 2.48 Four inter-related online registers are available.
- The UK Frequency Allocation Table (FAT) details the uses (referred to as 'allocations') to which various frequency bands are put to the UK.
  - The UK Plan for Frequency Authorisation (UK PFA) provides contextual information about which frequencies are available for assignment, for what purposes the different frequencies have been allocated and whether these can be traded.
  - The Wireless Telegraphy Act Register (WTR) provides information about individual tradable licences such as contact names and address details, class of licence, band(s) of frequencies and where appropriate geographic area of operation.
  - The Trade Notification Register (TNR) displays details of proposed trades notified to Ofcom, trades in progress and completed trades.

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<sup>8</sup> <https://www.ofcom.org.uk/spectrum/information/spectrum-information-system-sis>

## 3. The leasing process

- 3.1 You may grant spectrum leases only if your WT licence contains terms that expressly allow you to do so.

### Which licences may be leased

- 3.2 Before leasing spectrum rights, you should check whether your licence allows you to do so and obtain the necessary licence variation if it does not. As indicated in Table 4 below, we are currently limiting the availability of licence variations to allow leasing to Area Defined Business Radio licences and some auctioned licences. Suppliers Light Business Radio licences already contain the necessary terms to allow holders to hire out equipment.

### How do I apply for leasing or check whether my licence contains the necessary provisions to allow leasing

- 3.3 Table 4 below indicates the licence classes in which we are currently prepared to allow leasing. If in doubt, or if you wish to apply for a licence variation for leasing, please check with the Trading Desk at the address at the end of this guidance.

**Table 4: Licence classes which are able to lease (subject to inclusion of leasing terms in the licence)**

Licence sector or type	Licence class
Business Radio	<i>Area Defined</i>
	<i>Suppliers Light</i>
Spectrum Access	<i>All tradable licences except those licences covered by the Mobile Trading Regulations and Concurrent Spectrum Access licences (CSA) licences (also known as 'DECT guard band' licences).</i>

### Will Ofcom allow leasing in other licence classes in future

- 3.4 We will keep the position under review and consider requests to extend leasing more widely if there is market demand. However, this might involve changing our business processes and systems and complicate investigation of interference. We would need to assess whether the benefits justified the costs and the risks could be effectively mitigated.

### Is there any limit on the length of lease that a licensee may grant

- 3.5 Leases may be of any length up to the lifetime of your licence.

### What happens at the end of the lease period

- 3.6 The leaseholder is no longer authorised to use the spectrum. Continued use may constitute a criminal offence under the WT Act. Ofcom may take enforcement action

against persons using the spectrum without authorisation or causing interference to authorised users.

## What happens if there is a dispute between the parties about whether a lease is valid

3.7 This is a commercial matter for the parties to resolve this themselves. There is a requirement for leases to provide for a binding procedure to resolve disputes between the licensee and leaseholder. We will not normally involve ourselves in disputes that are contractual in nature. However, we may intervene, including ordering immediate shutdown, if necessary for spectrum management or to protect other users of spectrum.

## What regulatory requirements apply to the leasing process

3.8 The licensee and prospective leaseholder are free to negotiate the terms for the lease, including price and duration and there is no need to notify us of leases. However, they must comply with the conditions in the licence.

## What obligations are there on the parties to the lease

- 3.9 The terms of the licence that relate to leasing require the licensee (the 'lessor') to:
- have written contracts with leaseholders and make these available to Ofcom on request;
  - provide for prompt and satisfactory resolution of disputes;
  - inform leaseholders of the terms and conditions of the head licence and give them information about these;
  - inform leaseholders that failure to meet the licence terms and conditions may result in closedown of the equipment and incur penalties;
  - ensure that leaseholders' use of radio equipment complies with the lessor's licence conditions;
  - maintain records of leaseholders and sub-leaseholders where they permit sub-leasing; and
  - make that information available in timely manner on request to Ofcom personnel.
- 3.10 The Suppliers Light licence contains slightly different provisions and does not need to be varied as it already permits leasing.
- 3.11 The *leaseholder* must operate within the terms of the lessor's licence. Failure to do so may constitute a criminal offence under section 8 of the WT Act. The leaseholder may also be bound by contractual terms in the lease agreement.

## What is the lessor's role and responsibilities

3.12 This depends on the nature of the leasing arrangements. The simplest form of leasing is where the lessor allows a single leaseholder to exercise all the licence rights for a defined period.

- 3.13 At the other extreme, a lessor may choose to divide the spectrum rights under the licence between several leaseholders and, in effect, act as a commercial band manager. In such cases, the lessor may:
- plan the use of the spectrum in a way that takes account of leaseholders' needs for spectrum availability and quality; and
  - be responsible for acting as first port of call to resolve disputes and interference complaints as described in more detail below.

## **Who is responsible for paying the licence fee and other obligations under the licence**

- 3.14 Under the licence, the lessor remains responsible for all obligations under the licence, including paying licence fees to Ofcom.

## **Who may apply for a variation to allow leasing if the licence is held concurrently**

- 3.15 All concurrent licensees must consent to the variation, even where only one or more of them wishes to apply.

## **What happens if a leaseholder causes or complains of interference**

- 3.16 The licensee remains ultimately responsible for all obligations under the licence. We expect the lessor to act as first port of call to resolve complaints from its own leaseholders and to involve us only if unable to resolve the problem itself. In particular, we expect the lessor to resolve interference complaints between its leaseholders.
- 3.17 If we are called in and the problem on investigation proves to have been caused by something the lessor has done, for example in planning use of the spectrum, we may charge for the work involved in identifying the problem. We may also charge if the cause of the interference lies in the complainant's own installation.

## **Will Ofcom act against the lessor or against the leaseholder**

- 3.18 This will depend on the circumstances. Ofcom is under an obligation to act reasonably and proportionately in taking enforcement action and the legislation sets out the procedure we must follow. Relevant considerations include the following:
- whether, in the particular circumstances, the licensee could reasonably have been expected to have done more to ensure that the leaseholder complied, in which case we may act against the licensee;
  - whether the licensee had contributed to the breach in some way, for example by imposing contractual technical conditions that are incompatible with the licence, in which case we may act against the licensee;
  - whether the leaseholder had knowingly or recklessly acted in breach of the licence conditions and so may have committed a criminal offence under section 8 of the WT Act, in which case we may take prosecution action against the leaseholder;

- whether the leaseholder is causing interference to other users of spectrum, in which case it may be necessary to act directly against the leaseholder to require immediate modification or shutdown;
- whether the licensee has failed to keep adequate records of leases or sub-leases or to provide information when required, in which case we may act against the licensee.

## What will happen if the lessor's licence is revoked (for example for non-payment of licence fee), varied or transferred

- 3.19 If a lessor's licence is *revoked or surrendered*, the leases will automatically extinguish. Leaseholders' authorisation to use radio equipment will cease and they will no longer be authorised to use the spectrum. Leaseholders should be made aware that the lawfulness of their use of the spectrum will depend on the continuing validity of the lessor's licence, whether the leased rights fall within the terms and conditions of that licence and whether the licensee is allowed under the licence to grant leases so they may consider it prudent to undertake due diligence into these matters (see following section 4).
- 3.20 A similar scenario could occur if the lessor's licence is *varied* in a way that means that the leases are incompatible with the new licence terms, for example if the frequency range or coverage area is reduced or technical conditions are altered.
- 3.21 Revocation or variation could occur for various reasons, including changes in international obligations or directions from the Secretary of State that are outside the control of the licensee or Ofcom. Such occurrences are not expected to be frequent but cannot be ruled out.
- 3.22 If the licence is *transferred*, lease arrangements will automatically extinguish and a new lease will need to be entered into with the new licensee. However, the parties may arrange contractually for leases to be assigned to a new licensee as part of the transfer process.

## What provisions should appear in lease contracts

- 3.23 The contract terms will need to be carefully tailored to the parties' circumstances and wishes and it is their responsibility in their own interests to take such expert advice, including legal that they consider necessary to ensure this. However, they may wish to consider the following list of issues, which is not intended to be exhaustive:
- lease length and security of tenure;
  - technical restrictions on spectrum use, including frequency range and geographical coverage, and compatibility of these with the lessor's licence;
  - payment terms, spectrum quality and availability, which may be affected by grants of leases to other leaseholders;
  - whether sub-leasing (see following question) is allowed and, if it is, an obligation to provide details of sub-leaseholders to the licensee and process for so doing;
  - the lessor's responsibility to maintain the licence in force and liability if it lapses;
  - any contractual restrictions on transfer of the licence by the lessor and arrangements for notifying leaseholders of any intention to transfer the licence;

- the obligations and liability of the licensee and leaseholder in the event that the licence is revoked, varied or transferred, including arrangements for assigning leases to the new licensee;
- liability for interference caused by other leaseholders;
- any right of the lessor to access the leased spectrum;
- dispute resolution.

## Is sub-leasing allowed

- 3.24 'Sub-leasing' is an arrangement in which a leaseholder (referred to here as the 'first-level leaseholder') leases spectrum to another person (the 'sub-leaseholder'). The licence variation on leasing allows sub-leasing and it is for the licensee to consider whether or not to allow sub-leasing. If sub-leasing is allowed, it is subject to various restrictions and conditions.
- 3.25 Only one level of sub-leasing may be permitted and the licensee is required to include a restriction to that effect in the lease contract with the first-level leaseholder (in other words, licensee A may lease to B, who may sub-lease to C, but C may not sub-lease to D).
- 3.26 The licensee must maintain records of sub-leases and make these available to Ofcom personnel in the same way as for leases.
- 3.27 Any sub-leasing must be conducted in accordance with similar restrictions as apply to leasing, for example that the sub-lease must be compatible with the terms of the lessor's licence.
- 3.28 The licensee remains responsible for all obligations under the licence.

## Typical licence variation to allow leasing

### Grant of lease

The licensee may confer the benefit of the licence (which is hereinafter referred to as a "lease") on another person (referred to as the "leaseholder) in respect of any wireless telegraphy station or wireless telegraphy apparatus to which the licence relates, provided that the conditions [1 to 14] below are met.

### Conditions

The conditions are –

1. The licensee may only confer the benefit of the licence on one or more than one leaseholder for –
  - a) any geographical area forming part of the geographical area in which the licensee is authorised to establish, install or use wireless telegraphy stations or apparatus under this licence; and
  - b) for any frequency range forming part of the frequency band which the licensee is authorised to use.
2. The licensee shall remain responsible for all obligations under the licence (including without limitation the obligations to pay licence fees in condition [ ]).
3. If –



- a) the licensee transfers his rights and obligations under the licence by way of spectrum trade; or
- b) the licensee receives a notice of revocation from Ofcom revoking his licence,

the lease (and any sub-lease) shall automatically extinguish.

4. If Ofcom varies this licence in such a way that the provisions in condition 1 are no longer satisfied in respect of a lease which has been granted (or any sub-lease made by the leaseholder), that lease (or sub-lease) shall automatically extinguish.

5. The licensee shall inform the leaseholder and any sub-leaseholder immediately when his licence terminates (regardless of the reason for such termination).

6. The licensee must inform the leaseholder (and any sub-leaseholder) that it proposes to apply for a spectrum trade, prior to any such application being made to Ofcom.

7. The licensee shall ensure that the use of Radio Equipment by the leaseholder (and any sub-leaseholder) complies with the terms, provisions and limitations of this licence.

8. The licensee shall inform the leaseholder in writing of the following matters in writing before use of the radio equipment commences:

- a) the terms, provision and limitations of the licence that governs the establishment, use and use of the Radio Equipment;
- b) that failure to meet the terms, provisions and limitations of this licence may be a criminal offence;
- c) that failure to meet the terms, provisions and limitations of this licence may also result in close down of the Radio Equipment.
- d) 9. The licensee must have a written contract with the leaseholder containing the terms of the lease and must make this available to Ofcom immediately on request.
- e) 10. The licensee must maintain records at all times of the persons to whom he has granted a lease and any persons who have been granted a sub-lease under this Licence.

11. The licensee must make these records (and any other relevant information) immediately available to Ofcom on request.

12. The licensee must ensure that one of the terms of the written contract is that both parties are bound by a dispute resolution procedure that provides for the prompt and satisfactory resolution of disputes with or between the holders of leases or any sub-leases under this licence, including any relating to interference management.

13. If Ofcom investigates interference management issues which arise as a result of a complaint to Ofcom, and if both the person which is the subject of any undue interference caused and the source of any undue interference caused are the leaseholder, sub-leaseholders or the licensee himself, Ofcom will charge the licensee (and the licensee shall pay) Ofcom's costs which relate to the investigation.

14. The licensee must comply with all instructions given by Ofcom (whether verbal or in writing) which relate to the licence or the use of the frequency band, and ensure that any leaseholder any sub-leaseholder are immediately informed and also comply with these instructions.

## Grant of sub-lease

The licensee may in his contract with the leaseholder permit the leaseholder to confer the benefit of the licence (hereinafter referred to as “sub-lease”) on any other person (“sub-leaseholder”) provided that the conditions [2 to 7 and 10 to 21] are met.

15. The licensee must –

- a) prohibit the sub-leaseholder from further conferring the benefit of the licence on any other third party; and
- b) ensure that the sub-leaseholder is made aware of that prohibition.

16. The licensee must procure that the terms of any such permission are contained in his contract with his leaseholder.

17. The licensee must procure that the written contract between the leaseholder and the sub-leaseholder containing the terms of the lease is made available to Ofcom immediately on request.

18. The licensee must require in his contract that the leaseholder informs him immediately of any sub-lease which has taken place.

19. The sub-lease may only confer the benefit of the licence on one or more than one such person for –

- a) any geographical area forming part of the geographical area in which the licensee is authorised to establish, install or use wireless telegraphy stations or apparatus under this licence; and
- b) for any frequency range forming part of the frequency band which the licensee is authorised to use.

20. The licensee shall remain responsible for all obligations under the licence (including without limitation the obligations to pay licence fees in condition [ ]).

21. The licensee shall procure that the sub-leaseholder is informed of the following matters in writing before use of the radio equipment commences:

- a) the terms, provision and limitations of the licence that governs the establishment, installation and use of the Radio Equipment;
- b) that failure to meet the terms, provisions and limitations of this licence may be a criminal offence;
- c) that failure to meet the terms, provisions and limitations of this licence may also result in close down of the Radio Equipment.

NB:

(i) see Table 4 for availability of the leasing variation

(ii) the Suppliers Light licence provisions on leasing take a slightly different form and are already included in the licence.

## 4. Due diligence

### What checks should prospective transferees or leaseholders make before entering into trades, will Ofcom help with these

- 4.1 To facilitate due diligence, we have developed a checklist of matters on which we are willing to provide information to a licensee to pass to prospective transferees or leaseholders. If you want us to do this, please complete the Due Diligence Form that is available through the spectrum trading folder on the Radiocommunications licences<sup>9</sup> page of our website.
- 4.2 We will provide information following receipt of a completed Due Diligence Form signed by the licensee.
- **Licence holder** – We will confirm whether the licence was issued to the licence holder, or all of the concurrent licence holders.
  - **Fees (or instalments)** – We will confirm whether, under any Wireless Telegraphy (Licence Charges) Regulations, any fees remain owing to us in respect of the relevant licence.
  - **Revocation or variation notice** – We will confirm whether or not we have served a notice, under schedule 1, paragraph 7 of the WT Act on the holder, or concurrent holders, of the relevant licence of a proposal to revoke or vary that licence that has not yet been made.
  - **Revocation or variation request** – We will confirm whether the holder, or concurrent holders, of the relevant licence have asked us to revoke or vary that licence, and whether we have requested consent to a revocation or variation proposed by us but not yet made.
  - **Leasing** - We will confirm whether the licensee is allowed under the terms of the licence to grant leases.
  - **Trading** - Whether the licence is tradable and the types of trades permitted may be ascertained from the Trading Regulations. 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.

### What happens if a notice for licence revocation or variation has been served on a licensee

- 4.3 If we have served a notice under the licence (for example notice of intention to revoke or vary for spectrum management reasons), then the licence remains transferable until a formal variation notice (under schedule 1 paragraph 7 of the WT Act) is served. This usually happens around two months prior to the final implementation of the revocation. Once we have served formal notice, the licence is no longer tradable. We have instigated a procedure to ensure that in such a case any transferee will take the licence subject to the notice so prospective transferees and leaseholders will wish to be aware of the situation.

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<sup>9</sup> <https://www.ofcom.org.uk/manage-your-licence/radiocommunication-licences>

- 4.4 Prospective transferees or leaseholders may obtain further information from us on notices served on a licensee through the due diligence process.

## **Can I find out about trades that are in progress, will information about transfers be publicly available**

- 4.5 Yes. Once a transfer application is being progressed we will update the TNR to reflect this along with details of the trade. The TNR will then indicate the completion date. If the trade was not completed the TNR will be updated to reflect this however, no reasons will be given on the TNR as to why the trade was not completed. We will also update the WTR to reflect any new licence holdings.
- 4.6 *Regulation 9(2)* of the Trading Regulations requires us to publish information about effected transfers.

## **What about information on leases**

- 4.7 We do not hold information on leases. Any such information would need to be sought from the licensee.

## **Is other information available**

- 4.8 Further information that is publicly available, and to which the parties of the transaction may wish to refer, can be accessed from the spectrum trading folder on the Radiocommunications licences page of our website and from the SIS.

## **Can third parties provide input into our approval process**

- 4.9 In general, we do not formally consult before giving or refusing consent to any proposed trades but we take into account relevant information supplied by third parties in reaching our decision. Third parties can learn about proposed trades via the online TNR and may make representations concerning a particular trade by writing to the Spectrum Trading Desk (see below for contact details).

## **What about tax**

- 4.10 Spectrum trading, like all business activities, may give rise to income and gains which will be subject to tax in the normal way. This includes income tax, corporation tax, value added tax and other taxes as appropriate.
- 4.11 Trading parties who have tax-related queries are advised to refer them to HM Revenue and Customs or to seek their own professional advice.
- 4.12 Fees for WT Act licences are outside the scope of VAT.

## 5. Legal background

### What is the legislative framework for trading in the UK

- 5.1 Section 168 of the Communications Act 2003 originally enabled the introduction of spectrum trading in the UK. Section 168 was superseded without amendment by section 30 of the WT Act, under which trading is now authorised and regulated. Section 30 was amended on 26 May 2011 by the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>10</sup> to allow spectrum leasing.
- 5.2 The current trading regulations for most licence classes issued by Ofcom are the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>11</sup> (the “Trading Regulations”). These regulations revoked and replaced the Wireless Telegraphy (Spectrum Trading) Regulations 2004 that first introduced spectrum trading on 23 December 2003. The Trading Regulations make trading possible by detailing possible transfers, tradable licence classes and trading procedures.
- 5.3 Transfer of Recognised Spectrum Access licences including Crown and some ‘receive only’ spectrum holdings are covered by Wireless Telegraphy (Recognised Spectrum Access and Licence) (Spectrum Trading) Regulations 2009<sup>12</sup>.
- 5.4 Spectrum used by mobile operators to provide services are covered The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011<sup>13</sup>.

### What European Union requirements apply

- 5.5 Spectrum trading (both transfer and leasing) is permitted and governed in the EU by Article 9b of the EC Framework Directive (2002/21/EC) as revised in 2009. This requires that:
  - transfers are notified to the national regulatory authority and carried out in accordance with procedures laid down by it;
  - intended and effective transfers are made public; and
  - competition is not distorted as a result of any transfer or accumulation of spectrum rights (article 5.6 of the revised Authorisation Directive).

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<sup>10</sup> <http://www.legislation.gov.uk/ukSI/2011/1210/made/data.pdf>

<sup>11</sup> <http://www.legislation.gov.uk/ukSI/2011/1210/made/data.pdf>

<sup>12</sup> <http://www.legislation.gov.uk/ukSI/2009/17/contents/made>

<sup>13</sup> <http://www.legislation.gov.uk/ukSI/2011/1507/contents/made>

## 6. Further information

- 6.1 Our Spectrum Trading Desk is the first point of contact for more detailed information and clarification on spectrum trading, or that would like to conduct a trade. The Desk can be contacted by:

*post:* Spectrum Trading Desk, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA

email: [spectrum.tradingdesk@ofcom.org.uk](mailto:spectrum.tradingdesk@ofcom.org.uk)

telephone: 020 7981 3083