

The Ofcom logo features the word "Ofcom" in a bold, red, sans-serif font. Below the text is a horizontal bar composed of several colored segments: purple, blue, green, yellow, red, and purple.

making communications work  
for everyone

## Proposed changes to spectrum trading regulations

Statutory notices of proposals to make regulations  
under section 122 of the Wireless Telegraphy Act 2006

Consultation

Publication date: 20 December 2016

Closing Date for Responses: 27 January 2017

# About this document

This document contains two statutory notices of Ofcom's proposals to make changes to spectrum trading regulations for mobile services in the 3600 to 3800 MHz band.

Our first notice concerns our proposal to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017. Those Regulations would, if implemented, bring the transfer of rights for mobile services in the 3600 to 3800 MHz band under the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011. This change would enable Ofcom to conduct an assessment of the impact on competition of any trade before deciding on whether to approve it. We are also proposing 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) (Amendment and Further Provisions) Regulations 2015.

Our second notice concerns our proposal to make the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017. Its general effect would be to remove the reference to the frequency band 3605 to 3689 MHz in the Wireless Telegraphy (Spectrum Trading) Regulations 2012 as a result of the proposed changes set out in our first notice.

We invite comments on our proposed regulations and regulatory impact assessment by 5pm on 27 January 2017. We have consulted on the related policy issue about making the 3600 to 3800 MHz band available for 5G / mobile services in the future. That consultation closed on 15 December 2016. Subject to our consideration of consultation responses, we intend to make the final regulations as soon as practicable.

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## Section 1

# Statutory notices of Ofcom's proposals

## Introduction

- 1.1 This document gives and publishes two separate notices of our proposals to make changes to two different spectrum trading regulations in accordance with section 122(4) and (5) of the Wireless Telegraphy Act 2006 (the '2006 Act'). If we are to bring the use of certain electronic communication services in 3600 to 3800 MHz under the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011<sup>1</sup> (the 'Mobile Trading Regulations'), we would need to make some changes. Our proposed changes are set out in the following regulations:
- the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017 (the 'Proposed MTA Regulations'); and
  - the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017 (the 'Proposed STA Regulations').
- 1.2 The Proposed MTA Regulations would add the 3600 to 3800 MHz band to the list of frequencies covered under the Mobile Trading Regulations. As a consequence, we would need to remove some frequencies falling within that band from the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>2</sup> (the 'General Trading Regulations') by making the Proposed STA Regulations.
- 1.3 In addition, the Proposed MTA Regulations also includes a small amendment to include a reference to the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015<sup>3</sup> in the Mobile Trading Regulations.
- 1.4 Section 122(4) of the 2006 Act provides that, before making any regulations under a power in the 2006 Act, Ofcom must give a notice of its proposal to do so to such persons representative of the persons appearing to Ofcom to be likely to be affected by the implementation of the proposal as Ofcom thinks fit; publish notice of its proposal in such manner as Ofcom considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it; and consider any representations that are made to Ofcom before the time specified in the notice.
- 1.5 Section 122(5) provides that a notice for the purposes of section 122(4) must state that Ofcom proposes to make the regulations in question; set out the general effect of the regulations; specify an address from which a copy of the proposed regulations may be obtained; and specify a time before which any representations with respect to the proposal must be made to Ofcom.
- 1.6 The time specified for making such representations in respect of both notices in this document is **5pm on 27 January 2017**. Details of how to respond to these notices are set out at Annex 1.

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<sup>1</sup> S.I. 2011/1507 as amended by S.I. 2013/646 and S.I. 2015/1339.

<sup>2</sup> S.I. 2012/2187 as amended by S.I. 2015/1338.

<sup>3</sup> S.I. 2015/1709, amended by S.I. 2016/794.

- 1.7 We have consulted on the related policy issue about making the 3600 to 3800 MHz band available for 5G / mobile services in the future in our document *Improving consumer access to mobile services at 3.6 to 3.8 GHz* (the '3.6 GHz consultation')<sup>4</sup>. The consultation closed on 15 December 2016. The consultation included a question which related to making the changes which we are now proposing in the Proposed MTA Regulations. We consider that it is appropriate to proceed with these notices to invite further comment on the draft legislation that would implement this proposal.
- 1.8 We are currently also considering more generally the responses received to the 3.6 GHz consultation. We intend to publish a statement in 2017. Subject to our further consideration of consultation responses, and any further responses we receive in relation to these notices, we intend to make the Proposed MTA Regulations and the Proposed STA Regulations as soon as practicable.
- 1.9 Hard copies of these notices and the proposed regulations can be obtained from:
- Cliff Mason  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA
- E-mail: [Cliff.Mason@ofcom.org.uk](mailto:Cliff.Mason@ofcom.org.uk)  
Tel: 020 7783 4353
- 1.10 Electronic copies are also available and this notice has been placed on Ofcom's website <http://www.ofcom.org.uk>.
- 1.11 The remainder of this document states the regulations we propose to make and sets out the general effect of the regulations by means of statutory instruments in accordance with section 122(2) of the 2006 Act. While the analysis set out in this entire document represents a Regulatory Impact Assessment ('RIA'), specific aspects of the RIA are set out at Annex 4.

## **Notice of our proposal to amend the Mobile Trading Regulations**

- 1.12 We are proposing to make the Proposed MTA Regulations. They seek to make two main changes. First, they would substitute the Schedule to Mobile Trading Regulations for the Schedule to the Proposed MTA Regulations.
- 1.13 This substituted Schedule would have the effect of including frequency band 3600 to 3800 MHz in that Schedule, which would enable Ofcom, in particular, to conduct an assessment of the impact on competition of any transfer of frequencies in that band before deciding on whether to approve that transfer. 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. That regulation 8 also makes provision about other matters, which Ofcom must also take into account in giving consent to a proposed transfer.
- 1.14 Second, the Proposed MTA Regulations would amend regulation 6(b) and (c) of the Mobile Trading Regulations to add reference to any outstanding sum or any instalment payment due under the Wireless Telegraphy (Licence Charges for the 900

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<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0035/91997/3-6-3-8ghz-consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0035/91997/3-6-3-8ghz-consultation.pdf)

MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015<sup>5</sup>. This is because the fees for the 900 MHz and 1800 MHz licences are now prescribed in the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015.

- 1.15 That change would have the effect of updating regulation 6(b) and (c) of the Mobile Trading Regulations so that failure to pay the fees payable for the 900 MHz and 1800 MHz licences 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 spectrum trade is not authorised.
- 1.16 In that regard, it should be noted that we are proposing to retain the reference to any outstanding sum or any instalment payment due under the Wireless Telegraphy (Licence Charges) Regulations 2011, since the licences that we are proposing to make tradable under the Mobile Trading Regulations would continue to be subject to licence fees. Currently, these fees are set out in the Wireless Telegraphy (Licence Charges) Regulations 2011. Therefore, failure to pay the fees payable for the 3600 to 3800 MHz licences 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 spectrum trade is not authorised, once they have been made tradable under the Mobile Trading Regulations.
- 1.17 A draft of the Proposed MTA Regulations is set out at Annex 5 and their general effect is further discussed in Section 2 of this document.

## **Notice of our proposal to amend the General Trading Regulations**

- 1.18 We are proposing to make the Proposed STA Regulations. They would remove the reference to the frequency band 3605 to 3689 MHz in Part 14 of Schedule 2 to the General Trading Regulations. That Part 14 currently only specifies in Column 2 the frequency bands 3605 to 3689 MHz and 3925 to 4009 MHz, respectively, in relation to the Spectrum Access licence class specified in its Column 1. No other licence classes are specified in its Column 1.
- 1.19 This removal would mean that the frequency band 3605 to 3689 MHz would no longer be tradable under the General Trading Regulations. This is because regulation 4(1) of the General Trading Regulations would no longer apply to that frequency band by virtue of regulation 4(3). The latter provides regulation 4(1) shall apply to wireless telegraphy licences within the licence classes specified in Column 1 of each of Parts 3 to 21 of Schedule 2 which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part. Regulation 4(1) provides that, subject to regulation 8, a transfer by the holder of a wireless telegraphy licence to which regulation 4(1) applies of all of the rights and obligations arising by virtue of that wireless telegraphy licence is authorised if it satisfies one of the two conditions set out in regulation 4(2).
- 1.20 A draft of the Proposed STA Regulations is set out at Annex 6 and their general effect is further discussed in Section 2 of this document.

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<sup>5</sup> S.I. 2015/1709, amended by S.I. 2016/794.

## Section 2

# General effect of our proposed regulations

## The legislative framework

- 2.1 Spectrum trading is a process that allows the holders of certain wireless telegraphy licences granted by us under section 8 of the 2006 Act to transfer the licence rights to another person. Such a transfer involves the notification to Ofcom and the grant by us of a new licence to the transferee.
- 2.2 Ofcom has the power under section 30 of the 2006 Act to make regulations to authorise the transfer to another person by the holder of a wireless telegraphy licence of rights and obligations arising by virtue of such a licence. When doing so, section 122(7) of the 2006 Act enables us to make different provisions for different cases and to make incidental provisions.
- 2.3 Under section 30(4) and (5) of the 2006 Act, transfers that fail to comply with such regulations (or with certain conditions in licences) will be void. Under section 30(6) of the 2006 Act, a transfer is void if it fails to comply with a direction given by Ofcom in exercise of a power conferred by such regulations.

## The General Trading Regulations

- 2.4 We began the implementation of spectrum trading for selected licence classes through the making of regulations in 2004. Those regulations have been updated at intervals and the current rules relating to trades of non-mobile spectrum are set out in the General Trading Regulations.
- 2.5 Under the General Trading Regulations, licensees in specific classes may carry out:
  - outright total transfers, i.e. transfers of all of the rights and obligations arising under a licence to a third party;
  - concurrent total transfers, i.e. transfers of all of the rights and obligations arising under a licence to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
  - outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
  - concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s). This also includes time limited transfers.
- 2.6 We explain in paragraphs 1.18 and 1.19 of this document how the removal of the frequency band 3605 to 3689 MHz in our Proposed STA Regulations would have the effect of making that frequency band no longer be tradable under the General Trading Regulations.

## The Mobile Trading Regulations

- 2.7 Prior to 2011, the predecessor regulations to the General Trading Regulations did not extend to the 900 MHz, 1800 MHz and 2100 MHz bands. In 2011, we extended trading to these bands by the making of the Mobile Trading Regulations which came into force on 4 July 2011. Those Regulations were amended in 2013 and in 2015 to make various changes, including to tradable licence classes and frequency bands.
- 2.8 Licences covered (see Table 1 below) by the Mobile Trading Regulations are subject to additional conditions in relation to a transfer than compared with other licences covered by the General Trading Regulations.
- 2.9 In order for a transfer to take place under the Mobile Trading Regulations, Ofcom must first consent to the proposed transfer. In determining whether or not to consent to a proposed transfer, we need to take into account (as outlined in regulation 8 of the Mobile Trading Regulations) whether:
- the holder is, or the concurrent holders are, in breach of the terms of the wireless telegraphy licence under which the rights and obligations are to be transferred;
  - the transferee is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;
  - in the case of a transfer authorised by regulation 5 the transferor is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;
  - the transferee is able to meet any criteria relating to the persons to whom a wireless telegraphy licence of the class under which rights and obligations are to be transferred may be granted;
  - competition is likely to be distorted as a result of the transfer; and
  - it is requisite or expedient to refuse consent to the transfer:
    - in the interests of national security;
    - for the purposes of complying with a Community obligation of the United Kingdom or with any international agreement or arrangements to which the United Kingdom is party; or
    - for the purposes of complying with a direction by the Secretary of State given to Ofcom under section 5 of the Communications Act 2003 or section 5 of the 2006 Act
- 2.10 Under regulation 9 of the Mobile Trading Regulations, we may impose conditions in relation to the grant of consent for the transfer. Licensees may not be able to transfer the rights and obligations of their licence until these conditions are met.
- 2.11 The following licence classes and frequency bands set out in the Schedule to the Mobile Trading Regulations are currently (since 19 June 2015) tradable under those Regulations are set out in Table 1 below.



**Table 1: Licences and their associated frequency bands currently covered by the Mobile Trading Regulations**

<b>Column 1</b>	<b>Column 2</b>
<b><i>Licence Classes</i></b>	<b><i>Frequency Bands</i></b>
Public Wireless Network	791-821 MHz
Spectrum Access	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
	3410-3600 MHz

2.12 We explain in paragraphs 1.12 and 1.13 of this document how the inclusion of the frequency band 3600 to 3800 MHz in our Proposed MTA Regulations would have the effect of making that frequency band tradable under the Mobile Trading Regulations, including enabling Ofcom to conduct an assessment of the impact on competition of any transfer of frequencies in that band before deciding on whether to approve that transfer. We propose to achieve that inclusion by extending the current frequency band “3410-3600 MHz” to “3410-3800 MHz”, in the above Schedule.

## **Extent of application**

2.13 The General Trading Regulations and Mobile Trading Regulations do not extend to Guernsey. In addition, they cannot extend to Jersey or the Isle of Man because there has not been an Order in Council which extends the application of the relevant sections of the 2006 Act relating to transfers to these places.<sup>6</sup>

2.14 In line with the General Trading Regulations and Mobile Trading Regulations, the Proposed MTA Regulations as well as the Proposed STA Regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man.

<sup>6</sup> Paragraph 2 of the Wireless Telegraphy (Jersey) Order 2006 extends to Jersey the whole Part 2 of the 2006 Act other than sections 30 and 51. Paragraph 2 of the Wireless Telegraphy (Isle of Man) Order 2007 extends to the Isle of Man the whole Part 2 of the 2006 Act other than sections 30, 49 and 51.

## **Regulations to include the frequency band 3600 to 3800 MHz in the Mobile Trading Regulations and to update references to payable fees**

- 2.15 The Proposed MTA Regulations propose to change the Mobile Trading Regulations by regulation 2 of the Proposed MTA Regulations inserting, in effect, the frequency band 3600 to 3800 MHz into the Schedule to the Mobile Trading Regulations.
- 2.16 Specifically, we are proposing to make that inclusion by regulation 2 of the Proposed MTA Regulations substituting the Schedule to Mobile Trading Regulations for a new Schedule to the Proposed MTA Regulations, which inserts the frequency band 3600 to 3800 MHz by extending the current frequency band “3410-3600 MHz” to “3410-3800 MHz” in that Schedule. We are not, however, proposing to make any other changes to the Schedule to Mobile Trading Regulations.
- 2.17 We are also proposing to add references to any outstanding sum or any instalment payment due under the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015 in regulations 6(b) and (c) of the Mobile Trading Regulations. This is an administrative change to update the Mobile Trading Regulations, since the fees for the 900 MHz and 1800 MHz licences are now prescribed in the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015.
- 2.18 We are proposing to retain reference to any outstanding sum or any instalment payment due under the Wireless Telegraphy (Licence Charges) Regulations 2011 in regulations 6(b) and (c) of the Mobile Trading Regulations, since the licences that we are proposing to make tradable under the Mobile Trading Regulations would continue to be subject to licence fees. These fees are currently set out in the Wireless Telegraphy (Licence Charges) Regulations 2011.
- 2.19 The Proposed MTA Regulations would have the effect of updating regulation 6(b) and (c) of the Mobile Trading Regulations so that failure to pay the fees payable for the 900 MHz and 1800 MHz licences 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 spectrum trade is not authorised. Likewise, failure to pay the fees payable for the 3600 to 3800 MHz licences 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 spectrum trade is not authorised, once they have been made tradable under the Mobile Trading Regulations.

## **Regulations to remove the frequency band 3605 to 3689 MHz from the General Trading Regulations**

- 2.20 The Proposed STA Regulations propose to change the General Trading Regulations by regulation 2 of the Proposed STA Regulations deleting in Column 2 of Part 14 of Schedule 2 to the General Trading Regulations the words “3605-3689 MHz”. We are not, however, proposing to make any other changes to Part 14 of Schedule 2 to the General Trading Regulations.

## Annex 1

# Responding to this consultation

## How to respond

Ofcom would like to receive views and comments on the issues raised in this document, including the consultation question set out at Annex 3, **by 5pm on 27 January 2017**.

We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/changes-to-spectrum-trading-regulations>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.

If your response is a large file, or has supporting charts, tables or other data, please email it to [Cliff.Mason@ofcom.org.uk](mailto:Cliff.Mason@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after 27 January 2017.

Responses may alternatively be posted to the address below, marked with the title of the consultation.

Cliff Mason  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact Cliff Mason on 020 7783 4353, or email [Cliff.Mason@ofcom.org.uk](mailto:Cliff.Mason@ofcom.org.uk).

We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.

You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.

It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 3. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

If you want to discuss the issues and questions raised in this consultation, please contact Cliff Mason on 020 7783 4353, or email [Cliff.Mason@ofcom.org.uk](mailto:Cliff.Mason@ofcom.org.uk).

## Confidentiality

Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of

transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.

If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.

If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

We have consulted on the related policy issue about making the 3.6 to 3.8 GHz band available for 5G / mobile services in the future.<sup>7</sup> That consultation closed on 15 December 2016, following an extension to the initial closing date of 1 December 2016.

Subject to our consideration of consultation responses, we intend to make the Proposed MTA Regulations and Proposed STA Regulations as soon as practicable.

If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.

If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601  
Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

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<sup>7</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0035/91997/3-6-3-8ghz-consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0035/91997/3-6-3-8ghz-consultation.pdf)

## Annex 2

# Ofcom's consultation principles

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

### Before the consultation

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

### During the consultation

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

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

We will consult for up to ten weeks, depending on the potential impact of our proposals.

A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

If we are not able to follow any of these seven principles, we will explain why.

### After the consultation

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

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

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

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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

### DECLARATION

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

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

Name

Signed (if hard copy)

## Annex 3

# Consultation question

*Do you have any comments or representations on the Proposed MTA Regulations and/or the Proposed STA Regulations, including the regulatory impact assessment, set out in this document?*

## Annex 4

# Regulatory Impact Assessment

## Introduction

- A4.1 The analysis set out in this document represents a Regulatory Impact Assessment ('RIA') accompanying Ofcom's statutory notices of our proposals to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017 ('Proposed MTA Regulations') and the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017 ('Proposed STA Regulations'), published today.
- A4.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Communications 2003 Act (the '2003 Act'), which means that we will generally carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities.
- A4.3 On 6 October 2016, we published a consultation<sup>8</sup> that set out our proposals to make the 3600 to 3800 MHz band available for mobile services including 5G (the '3.6 GHz Consultation'). Following that consultation, this RIA relates to our proposals to make the Proposed MTA Regulations and the Proposed STA Regulations.

## Citizen and/or consumer interests

- A4.4 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. 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.
- A4.5 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 on whether to approve that trade under the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011<sup>9</sup> (the 'Mobile Trading Regulations'). We consider that such *ex ante* competition checks would, in turn, allow consumers/citizen to benefit from a variety of service providers, such as benefitting 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 900 MHz and 1800 MHz licences on the due date, or the presence of any outstanding instalment to be paid in relation to such fees, would continue to be

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<sup>8</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/future-use-at-3.6-3.8-ghz>

<sup>9</sup> S.I. 2011/1507, amended by S.I. 2013/646 and 2015/1339.



circumstances where the transfer of the rights and obligation arising from these licence is not authorised.

## Proposals, purposes and intended effects

### Proposed MTA Regulations

A4.6 One part of our RIA concerns our proposed changes to the Mobile Trading Regulations by the Proposed MTA Regulations.

#### Frequency band 3600 to 3800 MHz

A4.7 The Schedule to the Mobile Trading Regulations sets out two licence classes (i.e. Public Wireless Network and Spectrum Access, respectively) and specified frequency bands covered by those Regulations.

A4.8 The purpose of our proposal is to include frequency band 3600 to 3800 MHz in that Schedule. The Proposed MTA Regulations would substitute the Schedule to the Mobile Trading Regulations for the Schedule to the Proposed MTA Regulations.

A4.9 This substituted Schedule would have the effect of including frequency band 3600 to 3800 MHz in that Schedule, which would enable Ofcom, in particular, to conduct an assessment of the impact on competition of any transfer of frequencies in that band before deciding on whether to approve that transfer. 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. That regulation 8 also makes provision about other matters, which Ofcom must also take into account in giving consent to a proposed transfer.

#### Licence fees

A4.10 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<sup>10</sup>. The Proposed MTA Regulations would add reference to any outstanding sum or instalment payment due under the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015<sup>11</sup>.

A4.11 The purpose of our proposal is to ensure that a failure to pay the fees payable for the 900 MHz and 1800 MHz licences 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 obligation arising from these licence is not authorised.

A4.12 The need to make the proposed changes has arisen from the coming into force of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015, which have removed the level of the fees payable for the 900 MHz and 1800 MHz licences from the Wireless Telegraphy (Licence Charges) Regulations 2011 and

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<sup>10</sup> S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334 and 2015/1709.

<sup>11</sup> S.I. 2015/1709, amended by S.I. 2016/794.

prescribed the new fee levels for these licences, retaining the option of paying by ten monthly instalments.

- A4.13 For clarity, Ofcom is also proposing to retain reference to any outstanding sum or any instalment payment due under the Wireless Telegraphy (Licence Charges) Regulations 2011 in regulations 6(b) and (c) of the Mobile Trading Regulations. This is because the licences that we are proposing to make tradable under the Mobile Trading Regulations would continue to be subject to licence fees. Currently, these fees are set out in the Wireless Telegraphy (Licence Charges) Regulations 2011.
- A4.14 The intended effect of the Proposed MTA Regulations is that holders of a Public Wireless Networks licence for 900 MHz and 1800 MHz spectrum and the holders of the 3600 to 3800 MHz licences would continue to be able to transfer their rights and obligations arising from their licences, subject to the circumstances set out in regulation 6 of the Mobile Trading Regulations. These circumstances would continue to include where:
- a) any sum payable in respect of those licences, which is now set out in the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015 or the Wireless Telegraphy (Licence Charges) Regulations 2011, is owing to Ofcom because it has not been paid by the time it became due; or
  - b) any instalment is to be paid to Ofcom under regulation 8(1)(b) of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015 or under regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2011 in respect of those licences.

## **Proposed STA Regulations**

- A4.15 Another part of our RIA concerns our proposed changes to the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>12</sup> (the 'General Trading Regulations') by the Proposed STA Regulations.
- A4.16 The Proposed STA Regulations would remove the reference to the frequency band "3605-3689 MHz" in Part 14 of Schedule 2 to the General Trading Regulations. That Part 14 currently only specifies in Column 2 the frequency bands "3605-3689 MHz" and "3925-4009 MHz", respectively, in relation to the Spectrum Access licence class specified in its Column 1. No other licence classes are specified in its Column 1.
- A4.17 This removal would mean that the frequency band 3605 to 3689 MHz would no longer be tradable under the General Trading Regulations. This is because regulation 4(1) of the General Trading Regulations would no longer apply to that frequency band by virtue of regulation 4(3). The latter provides regulation 4(1) shall apply to wireless telegraphy licences within the licence classes specified in Column 1 of each of Parts 3 to 21 of Schedule 2 which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part. Regulation 4(1) provides that, subject to regulation 8, a transfer by the holder of a wireless telegraphy licence to which regulation 4(1) applies of all of the rights and

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<sup>12</sup> S.I. 2012/2187, amended by S.I. 2015/1338.

obligations arising by virtue of that wireless telegraphy licence is authorised if it satisfies one of the two conditions set out in regulation 4(2).

## **Ofcom's policy objective**

- A4.18 In addition to our above-mentioned principal duty under the 2003 Act, we are required under EU law<sup>13</sup> to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. We normally include under the Mobile Trading Regulations all bands that can be used for consumer mobile. This is because we consider that mobile spectrum different is from spectrum in general, in part because we believe that there is a material risk that concentration of mobile spectrum holdings could affect downstream competition, and the need for the above-mentioned *ex ante* competition check in the Mobile Trading Regulations.
- A4.19 As explained in the October Consultation, we consider that the frequency band 3600 to 3800 MHz has the potential to be used for mobile. We are in the process of considering any consultation responses received on this matter.

## **Costs to Ofcom and the public sector**

- A4.20 There are one-off administrative costs associated with making statutory instruments. We consider these implementation costs to be low. Ofcom would incur little additional cost as a result of our proposal to make the Proposed MTA Regulations and the Proposed STA Regulations. The framework for spectrum trading has already been set up and the bands are already subject to the requirements of the General Trading Regulations. For us to include the relevant wireless telegraphy licences in the bands within the Mobile Trading Regulations should require little additional cost.

## **Costs to business, including small business and the voluntary sector**

- A4.21 The business sector most likely to be affected is the mobile communications service provision sector. The types of service most likely to be provided using this spectrum are high speed mobile broadband services. One aspect which is different between the General Trading Regulations and 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.
- A4.22 As regards to costs to business more generally, Ofcom originally considered the benefits of spectrum trading in the RIA for the Spectrum Trading and Wireless Register Regulations 2004 and again when we replaced them with the General Trading Regulations in 2012. We 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 similarly apply to the Proposed MTA Regulations and the Proposed STA Regulations.

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<sup>13</sup> Article 5(6) of the Authorisation Directive (Directive 2002/20/EC).

- A4.23 On 20 June 2011, Ofcom published a statement of its decision on the proposals to make the licences for 900 MHz, 1800 MHz and 2.1 GHz spectrum tradable<sup>14</sup>. This statement included a RIA in respect of the Mobile Trading Regulations, which gave effect to the decision. The Proposed MTA Regulations would have the effect of retaining the regime for mobile spectrum trading and extending it to the 3600 to 3800 MHz band licences. As it was introduced in 2011 and included a provision to refuse to authorise a transfer if there is any outstanding fee or instalment to be paid to Ofcom.
- A4.24 Furthermore, on 29 May 2015, Ofcom published a statement and RIA on its decision to move the 1.4 GHz and 3410 to 3600 MHz bands under the Mobile Trading Regulations<sup>15</sup>. Therefore, Ofcom has already assessed, and consulted upon, the costs and benefits of the overall regime for mobile spectrum trading that the Proposed MTA Regulations would retain unchanged.
- A4.25 Finally, we do not consider that our proposal to make Proposed MTA Regulations amendment to regulation 6(b) and (c) of the Mobile Trading Regulations or the Proposed STA Regulations will have any material cost implications to business, including small business or the voluntary sector.
- A4.26 As explained in the October Consultation, we note that UK Broadband's current licence at 3605 to 3689 MHz would also be brought under the Mobile Trading Regulations as a result of the Proposed MTA Regulations and the Proposed STA Regulations. We consider, however, that any cost this might have, for example administrative costs associated with the spectrum transfer application process, is outweighed by the benefits discussed above, including our ability to conduct an assessment of the impact on competition of any trade before deciding on whether to approve it. In this context, we also note that it is our policy<sup>16</sup> normally to allow leasing for Spectrum Access to all tradable licences, except those licences covered by the Mobile Trading Regulations and Concurrent Spectrum Access licences (CSA) licences (also known as the 'DECT guard band'). UK Broadband is currently the only user in the 3600 to 3800 MHz band authorised to lease spectrum (licensed under its 2 x 84 MHz Spectrum Access at 3605 to 3689 MHz and 3925 to 4009 MHz). Our proposal to bring that band under the Mobile Trading Regulations will not, in itself, have any effect on UK Broadband's ability to lease spectrum under the terms of its existing licence. We will, however, give further consideration as to whether (or not) any changes to the terms of the UK Broadband's licence are appropriate in that regard.

## Equity and fairness

- A4.27 Ofcom has considered the fairness of its proposals and is confident that they are fair to users of spectrum, businesses and consumers. This is because:
- a) The extension of the Mobile Trading Regulations into the 3600 to 3800 MHz band would not force any existing user of spectrum to take any action to transfer their rights. Spectrum trading will be an entirely voluntary activity. It will only take

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<sup>14</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/trading-900-1800-2100/statement/900-1800-2100-statement.pdf>

<sup>15</sup>

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/83942/statement\\_making\\_of\\_trading\\_regs\\_1.4-2.3-3.4\\_ghz.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/83942/statement_making_of_trading_regs_1.4-2.3-3.4_ghz.pdf)

<sup>16</sup> Section 3 of the Trading Guidance Notes, OfW513 (July 2015).

place where both parties benefit from the trade; therefore no user should be at a disadvantage because of it.

- b) The proposed new frequency band 3600 to 3800 MHz will be subject to the same regulatory regime as other similar bands used to provide electronic communications services (including the proposed licences to be awarded in the 3410 to 3600 MHz band).
- c) The proposed amendments to regulation 6(b) and (c) of the Mobile Trading Regulations would ensure that transfers relating to the licence classes and frequency bands set out in the Schedule to Mobile Trading Regulations would continue to be subject to the same circumstances, including those relating to the payment of spectrum fees.

### **Provisional conclusion**

- A4.28 Ofcom has assessed the impact of making the Proposed MTA Regulations and the Proposed STA Regulations.
- A4.29 Subject to our consideration of any representations received in response to our consultation, our initial view is that the costs of our proposals are not likely to outweigh their benefits.

# Draft of the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017

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STATUTORY INSTRUMENTS

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**2016 No. 0000**

## **ELECTRONIC COMMUNICATIONS**

### **The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017**

*Made* - - - - - [0000]

*Coming into force* - - - - - [0000]

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

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

#### **Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2017 and come into force on [0000].

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

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

#### **Amendment to regulation 6**

3. In regulation 6 of the principal Regulations—

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<sup>(a)</sup> 2006 c.36.

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

- (a) for paragraph (b) substitute—
- “(b) any sum payable in respect of that licence under—
- (i) the Wireless Telegraphy (Licence Charges) Regulations 2011<sup>(c)</sup>; or
  - (ii) the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015<sup>(d)</sup>
- is owing to OFCOM because it has not been paid by the time it became due;”;
- (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 8(1)(b) of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015”.

#### Amendment to the Schedule

4. For the Schedule to the principal Regulations substitute the Schedule to these Regulations.

[Date]

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

## SCHEDULE

Regulations 4 and 5

### Licence Classes and Frequency Bands

<i>Column 1</i>	<i>Column 2</i>
<i>Licence Classes</i>	<i>Frequency Bands</i>
Public Wireless Network	791-821 MHz
Spectrum Access	832-862 MHz
	880-915 MHz
	925-960 MHz
	1452-1492 MHz
	1710-1781.7 MHz
	1805-1876.7 MHz
	1899.9-1980 MHz
	1899.9-1980 MHz
	2110-2170 MHz
	2350-2390 MHz
	2500-2690 MHz
	3410-3800 MHz

<sup>(c)</sup> S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334 and 2015/1709.

<sup>(d)</sup> S.I. 2015/1709, amended by S.I. 2016/794.

## **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 as amended by S.I. 2013/646 and S.I. 2015/1339) to include the frequency band 3600-3800 MHz in the Schedule and to add a reference in regulation 6(b) and (c) to the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) (Amendment and Further Provisions) Regulations 2015 (S.I. 2015/1709 as amended by S.I. 2016/794).

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 website at <http://www.ofcom.org.uk> or from the OFCOM Library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA. Copies of this assessment have also been placed in the library of the House of Commons.



Annex 6

# Draft of the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017

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STATUTORY INSTRUMENTS

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**2016 No. 0000**

## **ELECTRONIC COMMUNICATIONS**

### The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017

*Made* - - - - [0000]

*Coming into force* - - [0000]

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

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

#### **Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2017 and come into force on [0000].

#### **Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2012**

2. Part 14 of Schedule 2 to the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>(b)</sup> is amended by deleting in Column 2 the words “3605-3689 MHz”.

[Date]

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

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<sup>(a)</sup> 2006 c.36.

<sup>(b)</sup> 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 as amended by S.I. 2015/1338) by removing the reference to the frequency band 3605-3689 MHz in Column 2 of Part 14 of Schedule 2.

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 website at <http://www.ofcom.org.uk> or from the OFCOM Library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA. Copies of this assessment have also been placed in the library of the House of Commons.