



# Inclusion of the 1452 – 1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands in the Mobile Trading Regulations

Further consultation and notice of proposal to make regulations

Consultation

Publication date: 8 April 2015

Closing Date for Responses: 8 May 2015

## About this document

This consultation sets out Ofcom plans to include the 1452 -1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands within the Mobile Trading Regulations.

The spectrum access licence for the 1452 -1492 MHz band is currently held by Qualcomm UK Spectrum Ltd. Qualcomm has requested a licence variation to help enable the spectrum's use for mobile or fixed communication Network Supplemental Downlink (SDL) in the UK.

SDL is a new mobile broadband technology which, using a mobile base station transmitter network, provides additional bandwidth to deliver improved capacity for consumer mobile broadband services. Improved capacity can help service providers send more data to consumer devices, such as smartphones, tablets and laptops, at faster speeds.

The 2350-2390 MHz and 3410-3600 MHz spectrum bands are to be auctioned under proposals for the Public Sector Spectrum Release (PSSR) programme. As set out in previous consultations, we expect this spectrum to be used for mobile broadband.

In this consultation we are seeking views on plans to make two sets of regulations, which would allow the licences in the 1452 – 1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands to be traded with a competition assessment, should it be required. The draft regulations would give effect to our proposed policy.

This consultation closes on 8 May 2015.

# Contents

<b>Section</b>		<b>Page</b>
1	Summary	1
2	Proposal to include spectrum bands in the Mobile Trading Regulations	4
3	General effect of the proposed regulations	9
<b>Annex</b>		<b>Page</b>
1	Responding to this consultation	12
2	Ofcom's consultation principles	14
3	Consultation response cover sheet	15
4	Proposed Amendment Regulations	17
5	Proposed Mobile Regulations	19

## Section 1

# Summary

- 1.1 On November 2014, we consulted on the award of spectrum in the 2.3 GHz and 3.4 GHz bands (“the PSSR Auction Consultation”).<sup>1</sup> Within this consultation, we proposed to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz spectrum bands within the Wireless Telegraphy (Mobile Trading) Regulations 2011<sup>2</sup> (“Mobile Trading Regulations”). We proposed to do this because we expected these bands to be used for mobile access in the future. The effect of including these spectrum bands in the Mobile Trading Regulations would be to enable Ofcom to conduct an assessment of the impact on competition of any trade before deciding on whether to approve that trade.
- 1.2 In the case of the 1452-1492 MHz band, our proposal to include in the Mobile Trading Regulations was conditional on us deciding to vary the 1452-1492 MHz Spectrum Access licence (the “L-Band Licence”) in line with a consultation we issued on 30 September 2014 (“the Variation Consultation”).<sup>3</sup> The Variation Consultation proposed to vary the conditions of the licence to enable the spectrum to be used for Mobile or Fixed Communication Network Supplemental Downlink (“SDL”) in the UK. SDL is a new mobile broadband system which, using a mobile base station transmitter network, provides bandwidth to deliver additional download capacity for consumer mobile broadband services.
- 1.3 The Variation Consultation identified that, if the proposed variation were granted, then the spectrum may be used for mobile access. No respondents to the Variation Consultation objected to the principle of the spectrum band being used for mobile access, although some respondents raised concerns on particular aspects of how this would be permitted. We will address the issues raised by these concerns in our statement on the variation. We remain of the view that the grant of the variation is appropriate and intend to publish our statement on the variation at the same time as a statement on the issues on the trading regulations covered by this consultation.
- 1.4 No respondents to either consultation objected to the principle of bringing any of the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz spectrum bands within the Mobile Trading Regulations. We therefore intend to proceed with this change although, as noted above, this remains conditional on us varying the L-Band Licence in the case of the 1452-1492 MHz band. There is a separate question on the choice of time at which to make this change: this is the main focus of the new consultation in this document.
- 1.5 In the previous consultations we proposed to include all three bands in the Mobile Trading Regulations shortly before the PSSR auction. We indicated that we did not see a need to move the 1452-1492 MHz spectrum band under the Mobile Trading Regulations at an earlier date than this, even though it would be possible to use it for mobile access when the L-Band Licence was varied to enable the use of SDL. This was because we did not consider that a trade (or trades) of 1452-1492 MHz spectrum before the PSSR award would give rise to material competition concerns

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<sup>1</sup> *Public Sector Spectrum Release (PSSR) Award of the 2.3 GHz and 3.4 GHz bands*, Ofcom, 7 November 2014, [http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/summary/2\\_3\\_and\\_3\\_4\\_GHz\\_award.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/summary/2_3_and_3_4_GHz_award.pdf)

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2011/1507/made/data.pdf>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/licence-variation-1.4ghz/summary/1.4ghz-consultation.pdf>

which would warrant further action by Ofcom. In part, this was because of the amount of spectrum that would shortly become available in the PSSR award.

- 1.6 However, two respondents considered that we should include the 1452-1492 MHz spectrum band within the Mobile Trading Regulations from the date on which any licence variation is granted on the grounds that this was when the spectrum would become usable for SDL. There have also been a number of developments in the market since the Variation Consultation was issued, relating to proposed consolidations.
- 1.7 In light of these responses and market developments, we now consider that it would be appropriate to bring the 1452-1492 MHz spectrum band within the Mobile Trading Regulations at the time the L-Band Licence is varied to enable SDL. We have not, at this stage, established any specific concerns which might result from any particular operator acquiring the 1452-1492 MHz spectrum but recognise that issues could arise which warrant further consideration. To the extent that competition concerns arise in respect of a given trade, we can consider them at the time that any trade occurs.
- 1.8 Given that we propose to include the 1452-1492 MHz band within the Mobile Trading Regulations when we vary the L-Band Licence, we are also consulting on the proposal to include the 2350-2390 MHz and 3410-3600 MHz bands at the same time. This is because it is administratively simpler to do so as part of one consultation exercise and one set of amendments to regulations
- 1.9 In order to give effect to the proposals, this document gives notice of our intention to make two sets of regulations; the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2015 (the “Proposed Amendment Regulations”) and the Wireless Telegraphy (Mobile Trading) (Amendment) Regulations 2015 (the “Proposed Mobile Regulations”).
- 1.10 The 1452-1492 MHz spectrum band, and the frequency ranges 3480-3500 MHz and 3580-3600 MHz, are currently included in the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>4</sup> (“the General Trading Regulations”). The Proposed Amendment Regulations would amend the General Trading Regulations to remove the 1452-1492 MHz, 3480-3500 MHz and 3580-3600 MHz frequency ranges from the Schedule to those regulations. A draft of the Proposed Amendment Regulations is attached at Annex 4.
- 1.11 The Proposed Mobile Regulations would amend the Mobile Trading Regulations to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz spectrum bands within the Schedule to those regulations. A draft of the Proposed Mobile Regulations is attached at Annex 5.
- 1.12 In accordance with the requirements of section 122(4) and (5) of the Wireless Telegraphy Act 2006 (WT Act), this document gives notice of our intention to make the proposed regulations. Comments on the proposed regulations are invited by 5pm on 8 May 2015. Subject to consideration of responses we intend to bring the regulations into force at the time that any variation of the L-Band Licence is granted.

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<sup>4</sup> <http://www.legislation.gov.uk/uksi/2012/2187/made/data.pdf>

- 1.13 Copies of the proposed regulations are included in this document in the Annex. Further copies may be obtained from [www.ofcom.org.uk](http://www.ofcom.org.uk) or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

## Section 2

# Proposal to include spectrum bands in the Mobile Trading Regulations

- 2.1 In the PSSR Auction Consultation, we proposed to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz spectrum bands within the Mobile Trading Regulations.
- 2.2 In the case of the 2350-2390 MHz and 3410-3600 MHz bands we proposed to do this since we expect this spectrum to be useful for providing mobile access in the future. This view was partly based on the developing ecosystem for these bands, especially in terms of end user devices.<sup>5</sup>
- 2.3 In the case of the 1452-1492 MHz band, our proposal to include in the Mobile Trading Regulations was conditional on whether we varied the L-Band Licence so as to enable its use for SDL (as discuss further below). If the licence were varied, we expected this spectrum to also be useful for mobile access in the future.<sup>6</sup>
- 2.4 We proposed to bring the three bands into the Mobile Trading Regulations at the same time, shortly before the PSSR auction. This was for the following reasons:
- The large majority of the spectrum in the 2350-2390 MHz and 3410-3600 MHz bands will only become available to mobile operators through the PSSR award.<sup>7</sup> It therefore is not necessary to include this spectrum within the Mobile Trading Regulations until the PSSR award.
  - We did not consider that a trade of 1452-1492 MHz spectrum before the PSSR award would give rise to material competition concerns that would warrant further action by Ofcom. This was because of the amount of spectrum that would shortly become available in the PSSR award (when considering asymmetries in overall spectrum holdings) and because we did not consider this band would have similar characteristics as the 800MHz and 900 MHz bands (when considering asymmetries in holdings of low frequency spectrum).<sup>8</sup>
  - As we considered there was no necessity for including any of the bands in the Mobile Trading Regulations before the PSSR auction, we proposed to bring all three bands within the Mobile Trading Regulations shortly before the auction. We proposed to do this for all three bands at the same time as part of one process for administrative simplicity.
- 2.5 In this section, we separate our consideration of:

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<sup>5</sup> See paragraphs 7.53 to 7.60 of the PSSR Auction Consultation, [http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/summary/2\\_3\\_and\\_3\\_4\\_GHz\\_award.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/2.3-3.4-ghz-auction-design/summary/2_3_and_3_4_GHz_award.pdf)

<sup>6</sup> See paragraphs 7.61 to 7.63 of the PSSR Auction Consultation.

<sup>7</sup> The exception to this is the 40 MHz of 3.4 GHz spectrum that is held by UK Broadband.

<sup>8</sup> See paragraphs 4.49 to 4.58 of the Variation Consultation for more details on why we did not consider a trade of the 1452-1492 MHz spectrum would raise competition concerns, <http://stakeholders.ofcom.org.uk/binaries/consultations/licence-variation-1.4ghz/summary/1.4ghz-consultation.pdf>

- *whether* we should bring the three bands within the Mobile Trading Regulations; and
  - *when* we should do this.
- 2.6 Before doing so, we summarise the position as regards the variation of the L-Band Licence since the proposal to move the 1452-1492 MHz band under the Mobile Trading Regulations was, and is, conditional on this variation taking place.

## Varying the L-Band Licence to allow SDL

- 2.7 The 1452-1492 MHz spectrum band has remained unused in many European countries, including the UK, for the past decade, although harmonised for T-DAB<sup>9</sup> and S-DAB<sup>10</sup>. In March 2015, following a review by the European Conference of Postal and Telecommunications Administrations (CEPT)<sup>11</sup>, the European Commission's Radio Spectrum Committee (RSC) adopted a binding Implementing Decision on the harmonisation of the 1452-1492 MHz band for terrestrial systems capable of providing electronic services in the European Union. It sets out the conditions for the harmonised use of the 1452 – 1492 MHz spectrum band for SDL. This Decision will be published shortly in the European Union's Official Journal and will be implemented in the UK.
- 2.8 Qualcomm is the holder of the L-Band Licence. It acquired the rights to the 1452-1492 MHz spectrum band in May 2008 in the auction conducted by Ofcom. In October 2013, Qualcomm submitted a request to have the L-Band Licence varied so as to help enable the use of SDL in the frequencies covered by the L-Band Licence. After receiving its licence variation request we asked Qualcomm to carry out a detailed technical analysis of the impact of the requested changes on adjacent spectrum users. After considering this analysis we developed a set of proposals that would allow the use of SDL in the 1452-1492 MHz spectrum band while ensuring adequate protection for users of fixed links in the adjacent 1492 -1517 MHz band. We consulted on these proposals in the Variation Consultation.
- 2.9 No respondents to the Variation Consultation objected to the principle of the spectrum band being used for mobile access and we remain of the view that the grant of the variation is appropriate. Indeed, the RSC decision referred to above will require Ofcom to vary the Qualcomm licence in a way that implements this decision. A number of respondents raised technical issues around how this may be achieved and we intend to issue a statement on the variation at the same time as a statement on the issues covered by this consultation.

## Bringing the bands within the Mobile Trading Regulations

### Consultation responses

- 2.10 No respondents to either the PSSR Auction Consultation or the Variation Consultation disagreed with the principle of including the three bands within the Mobile Trading Regulations.

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<sup>9</sup> Terrestrial Digital Audio Broadcasting

<sup>10</sup> Satellite Digital Audio Broadcasting

<sup>11</sup> This review culminated in the CEPT ECC Decision 13(03) which was approved on 8 November 2013 and examined conditions for the use of the 1452-1492 MHz spectrum band for SDL.

## Assessment and decision in principle

- 2.11 We remain of the view that the three bands should be brought within the Mobile Trading Regulations at an appropriate point in time. We consider that spectrum used for mobile access is different from spectrum in general, in part because there is a material risk that concentration of mobile spectrum holdings could affect downstream competition.<sup>12</sup> For example, if spectrum shares are very asymmetric, then the operator with a low spectrum share will tend to have higher marginal costs of adding capacity than operators with high spectrum shares. The operator with a low spectrum share could become capacity constrained and have reduced incentive to compete for new customers, which could be against consumers interests.
- 2.12 The Mobile Trading Regulations therefore make trades of mobile spectrum subject to Ofcom's consent. In considering whether or not to grant such consent, Ofcom may conduct a competition assessment of the trade to determine the extent to which competition may be distorted as a result of the trade.
- 2.13 If the three bands we are concerned with were used for mobile access, competition concerns could arise in principle and we therefore consider they should be included within the Mobile Trading Regulations. This would allow Ofcom to conduct an assessment of the impact on competition of any trade of any of this spectrum prior to its completion.
- 2.14 We have considered the impact of including the three bands within the Mobile Trading Regulations. We recognise that the inclusion of the bands within the Mobile Trading Regulations introduces an additional administrative step in the trading process through the requirement for Ofcom consent. It therefore increases the administrative barriers to making a trade and could delay the completion of a trade. An ex ante competition check might also act as a disincentive to trading activity where there are concerns that Ofcom might not consent to the trade.
- 2.15 However, we do not consider that, in general, the additional administrative burden is likely to be significant and intend that our procedures for assessing whether or not to consent to a trade should not unduly complicate the trading process. Where genuine competition concerns arise, the administrative burden may rise. However, if an anti-competitive trade is able to proceed without regulatory intervention, the benefits of competition between mobile operators are likely to be reduced.
- 2.16 We have decided, in principle, to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz spectrum bands in the Mobile Trading Regulations. In the case of the 1452-1492 MHz band, this remains conditional on the variation of the L-Band licence, although we have indicated above that we intend to proceed with this variation.

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<sup>12</sup> This is set out in more detail in the 2011 statement of our decision to make the 900, 1800 and 2100 MHz mobile spectrum tradable. See in particular paragraphs 3.5 to 3.9 of Ofcom's *Statement on proposal to make 900 MHz, 1800 MHz and 2100 MHz public wireless network licences tradable*, 20 June 2011, <http://stakeholders.ofcom.org.uk/binaries/consultations/trading-900-1800-2100/statement/900-1800-2100-statement.pdf>

## Timing of bringing the bands within the Mobile Trading Regulations

### Consultation responses

- 2.17 No respondents objected to the time at which we proposed to bring the 2350-2390 MHz and 3410-3600 MHz spectrum bands under the Mobile Trading Regulations. However, two respondents disagreed with the proposal to bring the 1452-1492 MHz band within the Mobile Trading Regulations shortly before the auction.
- 2.18 In its response to the PSSR Consultation, H3G said that it considered that we should bring the 1452-1492 MHz spectrum within the Mobile Trading Regulations at the point that we varied the licence to allow it to be used for mobile broadband.
- 2.19 Another respondent (whose response was confidential) noted the proposed mergers within the mobile sector and considered that “an unconstrained trade” of the 1452-1492 MHz spectrum could “further distort competition”.

### Proposals

- 2.20 Since the issue of the Variation Consultation and the PSSR Auction Consultation, two transactions have been announced. BT proposes to acquire EE, and Hutchison Whampoa (the parent company of H3G) proposes to acquire O2 UK from its current owner, Telefonica. If the acquisitions were completed without requiring any divestment of spectrum holdings, BT/EE would have the largest holding (of 255 MHz) of spectrum that we consider relevant to mobile access.<sup>13</sup> This compares with the highest overall holding by an individual operator at the time of issue of the Variation Consultation of 210 MHz.
- 2.21 These transactions are subject to review by the competition authorities.<sup>14</sup> Without prejudice to outcome of these reviews, we have considered the implications if BT’s acquisition of EE were to proceed without any divestment of spectrum. In this case, BT/EE’s holding of spectrum relevant for mobile access in the medium term would be 255 MHz, would represent 30% of the total<sup>15</sup>. If it also acquired all of the 1452-1492 MHz spectrum, it would hold 295 MHz (or 35%) of spectrum relevant for mobile access in the medium term.
- 2.22 In the PSSR Auction Consultation, we proposed having a cap in the PSSR auction on overall holdings of mobile spectrum of 310 MHz, which represents around 37% of total mobile spectrum. This was to address concerns as to potential outcomes from the award that could result in very asymmetric spectrum distributions which have the potential to reduce competition in the long term. A cap at this level would be consistent with not blocking BT/EE from acquiring all of the 1452-1492 MHz spectrum.<sup>16</sup> However, while a cap at that level was our preferred option in the PSSR Auction Consultation, we also consulted on other options, including a tighter cap of 280 MHz, or around 33%. Whilst we have not reached any conclusion on an

<sup>13</sup> We have not included all of the unpaired 2.6 GHz band as being relevant because some of it is restricted, as explained in more detail in paragraphs 6.67 and 6.68 and Section 10 of *Assessment of future mobile competition and award of 800 MHz and 2.6 GHz Statement*, Ofcom, 24 July 2012, <http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/statement.pdf>

<sup>14</sup> The CMA has issued a preliminary invitation to comment in relation to BT’s anticipated acquisition of EE, see <https://www.gov.uk/cma-cases/bt-ee-merger-inquiry>

<sup>15</sup> Percentage holdings in the medium term are calculated on the basis that spectrum in the 2350-2390 MHz and 3410-3600 MHz spectrum bands has been awarded.

<sup>16</sup> We note that BT/EE would have a higher share of spectrum that is suitable for mobile access in the short term, but holding the 1452-1492 MHz spectrum as well does not affect this. This is because the 1452-1492 MHz spectrum will not be immediately useful because there are currently no user devices that can use it.

appropriate level of a cap, in our view, the possibility that a trade could exceed one of the caps on which we are consulting (albeit not our preferred option) indicates that there are circumstances in which potential competition concerns might arise. Including the 1452-1492 MHz spectrum within the Mobile Trading Regulations when the licence was varied would allow us to consider any concerns in this respect before a trade could take place.

- 2.23 We also note that one respondent to the Variation Consultation argued that the 1452-1492 MHz band, as well as the 800 MHz, 900 MHz bands, should be considered as “low frequency spectrum” and that competition concerns could arise if holdings of this low frequency spectrum were very concentrated. If the 1452-1492 MHz spectrum band were within the scope of the Mobile Trading Regulations at the time that a trade (or trades) took place, then we would be able to consider any arguments put to us about competition concerns of this nature in relation to the specific trade(s) notified to us.
- 2.24 In light of the above, we consider it appropriate to include the 1452-1492 MHz spectrum within the Mobile Trading regulation when the L-Band Licence is varied to enable SDL. However, we have not, at this stage, established any specific concerns which might result from any particular operator acquiring the 1452-1492 MHz spectrum but recognise that issues could arise which warrant further consideration. To the extent that concerns arise, we can consider them at the time that any trade occurs.
- 2.25 Given that we propose to include the 1452-1492 MHz band within the Mobile Trading Regulations when we vary the L-Band Licence, we are also consulting on the proposal to include the 2350-2390 MHz and 3410-3600 MHz bands at the same time. This is because it is administratively simpler to do so as part of one consultation exercise and one set of amendments to the General Trading Regulations and Mobile Trading Regulations. We note that any trade of spectrum in the 3480-3500 MHz and 3580-3600 MHz frequency bands is currently subject to the General Trading Regulations. However, we do not consider that bringing forward the date that these bands are included in the Mobile Trading Regulations should have a significant impact on any stakeholder.
- 2.26 If the bands are brought within the scope of the Mobile Trading Regulations, guidance on the procedures we will follow in considering whether competition is likely to be distorted as a result of a trade of mobile spectrum is set out in Annex 1 of the 2011 statement on our decision to make the 900, 1800 and 2100 MHz mobile spectrum tradable.<sup>17</sup>

#### *Questions*

*Do you agree with the proposal to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands within the Mobile Trading Regulations at the same time as we vary the L-Band Licence to help enable its use for SDL?*

<sup>17</sup> Ofcom's *Statement on proposal to make 900 MHz, 1800 MHz and 2100 MHz public wireless network licences tradable*, 20 June 2011, <http://stakeholders.ofcom.org.uk/binaries/consultations/trading-900-1800-2100/statement/900-1800-2100-statement.pdf>

## Section 3

# General effect of the proposed regulations

## The legislative framework

- 3.1 Under section 30 of the Wireless Telegraphy Act 2006 (“the WT Act 2006”) Ofcom may by regulations authorise the transfer to another person by the holder of a wireless telegraphy licence, or the holder of a grant of recognised spectrum access, of rights and obligations arising by virtue of such a licence or grant. Under section 30(4) and (5) transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.
- 3.2 A Licensee cannot assign its Licence to another party, but it may transfer the rights and obligations to another person under the spectrum trading regime. 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. 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).
- 3.3 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 Spectrum Trading Regulations which came into force on 4 July 2011. Those Regulations were amended in 2013 to include the 800 MHz and 2.6 GHz bands.
- 3.4 Licences covered by the Mobile Trading Regulations are subject to additional conditions in relation to a transfer than compared with other licences.
- 3.5 In order for a transfer to take place Ofcom must first consent to the transfer. In determining whether or not to consent to a proposed transfer, as outlined in regulation 8 of the Mobile Trading Regulations, we need 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 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(3) or section 5 of the Wireless Telegraphy Act 2006.

3.6 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.

## Extent of application

3.7 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 WT Act relating to transfers to these places<sup>18</sup>. In line with the General Trading Regulations and Mobile Trading Regulations, the proposed regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man.

## Regulations to remove the 1452-1492 MHz Band from the General Trading regulations

3.8 The Proposed Trading Regulations proposes to make the following change to the General Trading Regulations.

- 3.8.1 Regulation 2 removes the frequency bands 1452-1492 MHz, 3480-3500 MHz and 3580-3600 MHz from Part 11 of Schedule 2.

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<sup>18</sup> Paragraph 2 of the Wireless Telegraphy (Jersey) Order 2006 extends to Jersey the whole Part 2 of the WT Act other than sections 30 and 51. Paragraph 2 of the Wireless Telegraphy (Isle of Man) Order 2007 extends to the Isle of Man the whole Part 2 of the WT Act other than sections 30, 49 and 51.

## **Regulations to include the 1452-1492 MHz, 2350-2390 MHz and 3410-3600 MHz Bands in the Mobile Trading regulations**

3.9 The Proposed Trading Regulations proposes to make the following change to the Mobile Trading Regulations

3.9.1 Regulation 2 inserts the bands 1452-1492 MHz , 2350-2390 MHz and 3410-3600 MHz into the Schedule to the Mobile Trading Regulations.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 8 May 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/mobile-trading-regs-apr-15/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data – please email [1.4ghzvariation@ofcom.org.uk](mailto:1.4ghzvariation@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet. Note that for convenience we will use the “1.4Ghzvariation” mailbox to gather responses to this consultation.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Mrinal Patel  
Spectrum Policy Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the question asked in this document. It would also help if you can explain why you hold your views and how Ofcom’s proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and the question raised in this consultation, or need advice on the appropriate form of response, please contact Mrinal Patel on 020 7981 3127.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

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

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in Q1 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

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

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

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

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

### Before the consultation

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

### During the consultation

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

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

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

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

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

### After the consultation

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

## Annex 3

# Consultation response cover sheet

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

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

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

Nothing	<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 4**

# Proposed Amendment Regulations

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[ D R A F T ] S T A T U T O R Y I N S T R U M E N T S

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**2014 No. XX**

## **ELECTRONIC COMMUNICATIONS**

### **The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2015**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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>(1)</sup> (“the Act”).

Before making the 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 2015 and come into force on **[insert date]**.

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

**2.** Part 11 of Schedule 2 to the Wireless Telegraphy (Spectrum Trading) Regulations 2012<sup>(2)</sup> is amended by deleting in Column 2 the words “1452–1492 MHz”, “3480–3500 MHz” and “3580–3600 MHz”.

[Name]

[Name]

[Date]

For and by the authority of the Office of Communications

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<sup>(1)</sup> 2006 c.36

<sup>(2)</sup> S.I. 2012/2187

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations amend the Wireless Telegraphy (Spectrum Trading) Regulations 2012 by removing the reference to the frequency bands 1452–1492 MHz, 3480–3500 MHz and 3580–3600 MHz in Part 11 of Schedule 2.

## Annex 5

# Proposed Mobile Regulations

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[ D R A F T ] S T A T U T O R Y I N S T R U M E N T S

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**2015 No. XX**

## **ELECTRONIC COMMUNICATIONS**

### **The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2015**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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>(1)</sup> (“the Act”).

Before making the 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**

**3.** These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading)(Amendment) Regulations 2015 and come into force on **[insert date]**.

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

**4.** The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011<sup>(2)</sup> are amended in accordance with the following provisions of this regulation.

**5.** For the Schedule substitute—

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<sup>(1)</sup> 2006 c.36

<sup>(2)</sup> S.I. 2011/1507

**“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
	832–862 MHz
Spectrum Access	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”

[Name]  
[Name]

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

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations amend the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 to include the frequency bands 1452–1492 MHz, 2350–2390 MHz and 3410-3600 MHz in the Schedule.