



Ofcom's decision to make Wireless Telegraphy Trading and Register Regulations

Statement

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Wireless Telegraphy Trading and Register Regulations

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Section 1

Executive summary

1.1 This statement confirms that, following formal consultation, Ofcom has made regulations that extend the ability to transfer Wireless Telegraphy Act 2006 (the 'WT Act') spectrum licence products in the Maritime and Satellite sectors. The regulations also removed the need for Ofcom to consent to a transfer of rights to use spectrum, in most instances¹. On 23 August 2012 the following regulations were made by Ofcom and come into force on 13 September 2012:

- the Wireless Telegraphy (Spectrum Trading) Regulations 2012, S.I. 2012/2187 (the 'Trading Regulations'), that revoke and replace the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (the '2004 Trading Regulations'), as amended; and
- the Wireless Telegraphy (Register) Regulations 2012, S.I. 2012/2186 (the 'Register Regulations'), that revoke and replace the Wireless Telegraphy (Register) Regulations 2004 (the '2004 register Regulations'), as amended.

1.2 The Trading Regulations extend the ability to transfer all or part of the rights to use spectrum under a WT Act licence to the maritime and satellite earth station licence classes. The regulations also implement Ofcom's decisions outlined in our statements "Statement on Authorisation regime for GNSS repeaters" published June 2012² and "Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems (MMS)" published July 2009³.

1.3 The changes allow licensees the flexibility to transfer unused/ underused elements of their spectrum holdings to a third party who could make use of it. However, this does not permit the new licensee who has been transferred the rights and obligations of the licence to use spectrum for an alternative purpose. The new licensee will still be bound to the terms, conditions and restrictions of the original licence. The specific licence products to which we have extended the ability to transfer are listed below. However, there are differences in the type of transfers that are permitted and these are explained in section 3:

- Coastal Station Radio (International);
- Coastal Station Radio (UK);
- Coastal Station Radio (International) Area Defined;
- Coastal Station Radio (UK) Area Defined;
- Coastal Station Radio (Marina);

¹ The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 and Wireless Telegraphy (Recognised Spectrum Access and Licence) (Spectrum Trading) Regulations 2009 will still require Ofcom to consent to trades.

² <http://stakeholders.ofcom.org.uk/consultations/gnss-repeaters/>

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/cgcs2/statement/2ghzstatement.pdf>

- Coastal Station Radio (Training School);
 - Differential Global Positioning System (DGPS);
 - Maritime Radio (Suppliers and Demonstration);
 - Permanent Earth Station (PES);
 - Transportable Earth Station (TES);
 - Satellite (Earth Station Network);
 - Satellite (Earth Station) (Non-Fixed Satellite Service);
 - Satellite (Earth Station) (Non-Geostationary);
 - Satellite (Complementary Ground Components of a Mobile Satellite System); and
 - Global Navigation Satellite System (GNSS) Repeaters.
- 1.4 It is important to note that although our regulations introduce the ability for licensees to transfer all or part of the rights arising by virtue of their WT Act licence, there is no compulsion to do so. Spectrum transfer is not mandatory and therefore our Trading Regulations have no impact on those licensees (or their current licence terms) who do not wish to engage in it.
- 1.5 The Register Regulations extend the ability for Ofcom to publish certain information necessary to support the transfer process and provide information to the market to the newly transferable licence products. The information is available electronically in an on-line register, the Wireless Telegraphy Register (WTR)⁴. The publishing of data on the WTR fulfils our obligation under the WT Act and is compliant with the Data Protection Act.
- 1.6 Before deciding to make the regulations, in accordance with the requirements of section 122(4) of the WT Act, on 20 June 2012 we published a Statutory Notice “Notice of Ofcom’s proposals to make Wireless Telegraphy Trading and Register Regulations” (the ‘Notice’)⁵. The Notice contained drafts of the regulations and invited comments from stakeholders. We received no comments to our consultation.
- 1.7 On reviewing the proposed regulations we decided to make a number of minor editorial changes. The changes that we introduced into the regulations are outlined in sections 4 and 5 of this document. None of the changes alter the transfer parameters for the licence products.
- 1.8 The regulations will be available on the website www.legislation.gov.uk under the titles listed above. A copy of Regulatory Impact Assessment (RIA) is also included in the Annex to this statement.

⁴ <http://spectruminfo.ofcom.org.uk/spectrumInfo/licences>

⁵ <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-trading/>

Section 2

Background

Policy implementation

2.1 The Spectrum Trading and Register Regulations implement a number of policy decisions taken by Ofcom, these fall into the three following areas:

- extending spectrum transfers to new WT Act licence products;
- removing the need for Ofcom to consent to a transfer; and
- consolidating the previous legislation.

Extending spectrum transfers

2.2 In our 2 December 2011 consultation on “Extending spectrum transfer to the maritime and satellite earth station sectors” (the ‘2011 Consultation’)⁶, we proposed to make a number of licence products in the maritime and satellite earth station sectors transferable. Section 4 of the 2011 Consultation outlined our proposals and asked for comments on them. After considering the responses to the 2011 Consultation we decided to go ahead with our proposals. This decision was outlined in our document entitled “Extending spectrum transfer to the maritime and satellite earth station sectors” (the ‘2011 Statement’)⁷ published on 23 May 2012.

2.3 In addition to the 2011 Statement the Trading and Register Regulations also implement our decision, which we had previously consulted on, to make two other licence classes transferable. These were:

- Satellite (Complementary Ground Components of a Mobile Satellite System)⁸; and
- Global Navigation Satellite System (GNSS) Repeaters⁹.

Removing the need to consent to a transfer

2.4 In our document entitled “Simplifying spectrum trading” (the ‘Simplification Consultation’)¹⁰ published on 22 September 2009, we sought views on proposals to simplify the transfer process. In particular, we proposed to remove the need for Ofcom to consent to the transfer for most WT Act licences. Our statement of 29 June 2011 (the ‘Simplification Statement’)¹¹ set out our decision to modify the spectrum

⁶ <http://stakeholders.ofcom.org.uk/consultations/transfer-maritime-satellite/>

⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/transfer-maritime-satellite/statement/statement.pdf>

⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/cgcs2/statement/2ghzstatement.pdf>

⁹ <http://stakeholders.ofcom.org.uk/consultations/gnss-repeaters/>

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/simplify/summary/simplify.pdf>

¹¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/simplify/statement/statement-spectrum-leasing.pdf>

transfer process by removing the need for Ofcom to consent to the transfer for most WT Act licences¹² (paragraph 4.2.5).

Consolidation of legislation

2.5 In addition to policy decisions being implemented we proposed to also consolidate most of the existing legislation. We believed that this would make it easier for stakeholders to understand the regulatory environment and reduce the administrative burden. Consolidating the legislation reduces the number of Statutory Instruments from twenty to two.

2.6 The Trading Regulations revoked and replace the following regulations:

- Wireless Telegraphy (Spectrum Trading) Regulations 2004¹³;
- Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006¹⁴;
- Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2006¹⁵;
- Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007¹⁶;
- Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2007¹⁷;
- Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008¹⁸;
- Wireless Telegraphy (Spectrum Trading) (Amendment) (No 2) Regulations 2008¹⁹; and
- Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 3) Regulations 2008²⁰.

2.7 The Register Regulations revoke and replace the following regulations:

- Wireless Telegraphy (Register) Regulations 2004²¹;
- Wireless Telegraphy (Register) (Amendment) Regulations 2006²²;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006²³;

¹² The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 will still require Ofcom to consent to trades in the 880 – 915 MHz, 925 – 960 MHz, 1710 – 1787.1 MHz, 1805 – 1876.7 MHz, 1899.5 – 1980 MHz and 2110 to 2170 MHz bands.

¹³ <http://www.legislation.gov.uk/uksi/2004/3154/made/data.pdf>

¹⁴ <http://www.legislation.gov.uk/uksi/2006/339/made/data.pdf>

¹⁵ <http://www.legislation.gov.uk/uksi/2006/1807/made/data.pdf>

¹⁶ <http://www.legislation.gov.uk/uksi/2007/380/made/data.pdf>

¹⁷ <http://www.legislation.gov.uk/uksi/2007/3387/made/data.pdf>

¹⁸ <http://www.legislation.gov.uk/uksi/2008/688/made/data.pdf>

¹⁹ http://www.legislation.gov.uk/uksi/2008/2105/pdfs/uksi_20082105_en.pdf

²⁰ <http://www.legislation.gov.uk/uksi/2008/3192/made/data.pdf>

²¹ <http://www.legislation.gov.uk/uksi/2004/3155/made/data.pdf>

²² <http://www.legislation.gov.uk/uksi/2006/1808/contents/made>

²³ <http://www.legislation.gov.uk/uksi/2006/1808/contents/made>

- Wireless Telegraphy (Register) (Amendment) Regulations 2007²⁴;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2007²⁵;
- Wireless Telegraphy (Register) (Amendment) Regulations 2008²⁶;
- Wireless Telegraphy (Register) (Amendment) (No 2) Regulations 2008²⁷;
- Wireless Telegraphy (Register) (Amendment) (No. 3) Regulations 2008²⁸;
- Wireless Telegraphy (Register) (Amendment) Regulations 2009²⁹;
- Wireless Telegraphy (Register) (Amendment) Regulations 2011³⁰;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2011³¹; and
- Wireless Telegraphy (Register) (Amendment) (No. 3) Regulations 2011³².

The Notice

2.8 Following the 2011 Statement, as required by section 122(4) of the WT Act, we consulted on our draft regulations in the Notice³³. The proposed regulations included measures that would implement the changes that we set out in our 2011 Statement. We asked interested parties to consider the following questions when responding to the Notice.

Do you have any comments on the drafting of the Proposed Regulations that implement European and UK proposals?

Do you have any comments on the drafting of the Proposed SRD Regulations that implement European and UK proposals?

Do you have any comments on the drafting of the Proposed ITS Regulations that implement European and UK proposals?

Do you have any comments on the Regulatory Impact Assessment?

Responses

2.9 The Notice was published on 20 June 2012 and closed on 22 July 2012. We received no comments on the consultation.

²⁴ <http://www.legislation.gov.uk/uksi/2007/381/contents/made>
²⁵ <http://www.legislation.gov.uk/uksi/2007/3389/contents/made>
²⁶ <http://www.legislation.gov.uk/uksi/2008/689/contents/made>
²⁷ http://www.legislation.gov.uk/uksi/2008/2104/pdfs/uksi_20082104_en.pdf
²⁸ http://www.legislation.gov.uk/uksi/2008/3193/pdfs/uksi_20083193_en.pdf
²⁹ http://www.legislation.gov.uk/uksi/2009/14/pdfs/uksi_20090014_en.pdf
³⁰ <http://www.legislation.gov.uk/uksi/2011/439/made/data.pdf>
³¹ <http://www.legislation.gov.uk/uksi/2011/1508/made/data.pdf>
³² <http://www.legislation.gov.uk/uksi/2011/2756/made/data.pdf>
³³ <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-trading/>

Section 3

Permitted transfers

- 3.1 This section provides information on the licence products that are transferable and the types of transfer permitted once the regulations have come into force. Table 1 provides a list of the licence products to which we decided to extend the ability to transfer, the frequencies they operate on and the type of transfer that will be allowed under the Trading Regulations.

Table 1: List of licence products and permitted types of transfer

Licence class	Types of transfer
Coastal Station Radio (International) <i>156–162.05 MHz</i>	Outright Concurrent Partial transfer - Transfers of the rights and obligations relating to individual base stations (“individual assignments”) where the licence covers more than one base station. In the case of duplex channels, the rights and obligations under the licence relating to both frequencies would be transferred, however this would not give rise to any rights to transmit on the receive leg frequency. Spectrum segmentation will not be permitted due to international rules.
Coastal Station Radio (UK) <i>137.962–165.043 MHz</i>	Outright Concurrent Partial transfer - Spectrum segmentation to a minimum channel width of 6.25 kHz (subject to prior licence variation). Partial transfer - Transfers of the rights and obligations relating to individual base stations (“individual assignments”) where the licence covers more than one base station.
Coastal Station Radio (International) Area Defined <i>156–162.05 MHz</i>	Outright Concurrent Partial transfer - Geographical segmentation possible down to a minimum trading unit (50 km grid square). Partial transfer - Transfers of the rights and obligations relating to individual base stations (“individual assignments”) where the licence covers more than one base station. In the case of duplex

	channels both frequencies would be transferred, however this would not give rise to any rights to transmit on the receive leg frequency. Spectrum segmentation will not be permitted due to international rules.
Coastal Station Radio (UK) Area Defined <i>137.962–165.043 MHz</i>	Outright Concurrent Partial transfer - Spectrum segmentation to a minimum channel width of 6.25 kHz (subject to prior licence variation). Partial transfer - Geographical segmentation possible down to a minimum trading unit (50 km grid square). Partial transfer - Transfers of the rights and obligations relating to individual base stations (“individual assignments”) where the licence covers more than one base station.
Coastal Station Radio (Marina) <i>157.025 MHz, 157.85 MHz and 161.425 MHz</i>	Outright Concurrent Partial transfer – none permitted
Coastal Station Radio (Training School) <i>137.962–165.043 MHz</i>	Outright Concurrent Partial transfer – none permitted
DGPS <i>283–315 kHz, 435–495 kHz 505–526 kHz, 1625–1635 kHz 1800–1810 kHz, 1850–2000 kHz, 2000–2025 kHz, 2160– 2170 kHz, 2625–2650 kHz, 2650–2850 kHz, 3155–3200 kHz, 3200–3230 kHz and 3500–3800 kHz</i>	Outright Concurrent Partial transfer – none permitted
Maritime Radio (Suppliers and Demonstration) <i>283-315 kHz, 415-526 kHz, 16.06-27.5 MHz, 121.5 MHz, 121.65 MHz, 123.1 MHz, 137.962-165.043 MHz, 243 MHz, 406-406.1 MHz, 457.525 MHz, 457.537 MHz and</i>	Outright Concurrent Partial transfer – none permitted

457.55 MHz.	
<p>Permanent Earth Station (PES)</p> <p><i>3600-4200 MHz, 5150-5250 MHz, 5725-7075 MHz, 10.7-13.25 GHz, 13.75-14.5 GHz, 17.3-20.2 GHz, 27 – 30 GHz.</i></p>	<p>Outright</p> <p>Concurrent</p> <p>Partial transfer - Transfers of the rights and obligations relating to individual earth stations (“individual assignments”) where the licence covers more than one earth station.</p>
<p>Transportable Earth Station (TES)</p> <p><i>5.925-7.075 GHz, 13.78-14.5 GHz, 27.5-27.8185 GHz, 28.4545-28.8265 GHz and 29.4625-30 GHz.</i></p>	<p>Outright</p> <p>Concurrent</p> <p>Partial transfer - Transfers of the rights and obligations relating to individual earth stations (“individual assignments”) where the licence covers more than one earth station.</p>
<p>Satellite (Earth Station Network)</p> <p><i>14-14.25 GHz, 27.5-27.8185 GHz, 28.4545-28.8265 GHz and 29.4625-30 GHz.</i></p>	<p>Outright</p> <p>Concurrent</p> <p>Partial transfer – none permitted</p>
<p>Satellite (Earth Station) (Non-Fixed Satellite Service)</p> <p><i>137-138 MHz, 149-149.9 MHz, 2025-2110 MHz, 2200-2290 MHz, 3600-4200 MHz, 5150-5250 MHz, 5725-7075 MHz, 10.7-12.75 GHz, 27.5-27.8185 GHz, 28.4545-28.8265 GHz and 29.4625-30 GHz</i></p>	<p>Outright</p> <p>Concurrent</p> <p>Partial transfer – none permitted</p>
<p>Satellite (Earth Station) (Non-Geostationary)</p> <p><i>137-138 MHz, 149-149.9 MHz, 2025-2110 MHz, 2200-2290 MHz, 3600-4200 MHz, 5150-5250 MHz, 5725-7075 MHz, 10.7-13.25 GHz, 13.75-14.5 GHz, 19.7-20.2 GHz, 27.5-27.8185 GHz, 28.4545-28.8265 GHz and 29.4625-30 GHz</i></p>	<p>Outright</p> <p>Concurrent</p> <p>Partial transfer – none permitted</p>
<p>Satellite (Complementary Ground Components of a Mobile Satellite System)</p>	<p>Concurrent only as the MSS operator must also retain the rights and obligations of the CGC licence post-transfer.</p>

1980-2010 MHz and 2170-2200 MHz.	No outright transfer permitted to ensure that the obligation for CGC to remain integral to the MSS is retained. ³⁴ Partial transfer – none permitted
Global Navigation Satellite System (GNSS) Repeaters 1164 – 1215 MHz, 1215 – 1300 MHz and 1559 – 1610 MHz.	Outright Concurrent Partial transfer – none permitted

Change of use

- 3.2 We would like to highlight that the changes outlined in this document only relate to the ability of a licensee to transfer all or part of their rights and obligations to a third party. When making a transfer all existing rights and obligations are transferred to the new licensee and the new licensee would continue to hold the same type of licence and be subject to the same restrictions on use as the old licensee. This will, in practice, restrict the new licensee's right to use the spectrum in a similar way to the previous licensee. We may wish to consider the liberalisation of some licences in the future but this is not within the scope of the current consultation. Any such proposal on liberalisation would be subject to consultation with stakeholders.

³⁴ Further clarification on these points can be found in paragraphs 4.8 to 4.36 of "Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems (MSS). A statement on the licensing of 2 GHz MSS Complementary Ground Components (CGC)" published 17 July 2009 <http://stakeholders.ofcom.org.uk/binaries/consultations/cgcs2/statement/2ghzstatement.pdf>.

Section 4

Scope of the Wireless Telegraphy (Spectrum Trading) Regulations 2012

The legislative framework

- 4.1 We can permit the transfer of a wireless telegraphy licence by making regulations under section 30 of the WT Act. We implemented the changes proposed in the Notice by making the Trading Regulations. Copies of the Trading Regulations are available on <http://www.legislation.gov.uk/>.
- 4.2 Spectrum trading (both transfer and leasing) is permitted and governed in the European Union (EU) by Article 9b of the Framework Directive (2002/21/EC as revised by Directive 2009/140/EC)³⁵. The Framework Directive was transposed into UK law via section 168 of the Comms Act. This enabled the introduction of spectrum transfers in the UK. Section 168 was superseded without amendment by section 30 of the WT Act, under which trading is now authorised and regulated.
- 4.3 The 2004 Trading Regulations made transfers possible by detailing the possible transfer types, initial permitted licence products and procedures that need to be followed. These regulations have been subsequently amended a number of times to extend spectrum transfers to further licence classes. The Trading Regulations have now revoked and replace the 2004 Trading Regulations, as amended.
- 4.4 Under section 30(4) and (5), transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.

Extent of application

- 4.5 The Trading Regulations apply in the United Kingdom but not the Channel Islands and the Isle of Man. The Trading Regulations are not extended to Guernsey (see regulation 2) at the request of the Islands Authorities. The regulations 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 jurisdictions³⁶. This is in line with the previous 2004 Trading Regulations.

Changes made to the Proposed Register Regulations

- 4.6 We have made some minor editorial changes to the draft Trading Regulations on which we consulted. For instance, we substituted “*the frequency band*” for “*any of the frequency bands*” in reg. 7(a)(ii) because only one frequency band is set out in Part 3.

³⁵ http://ec.europa.eu/information_society/policy/ecomm/doc/library/regframeforec_dec2009.pdf

³⁶ 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.

- 4.7 We have also made some further changes to clarify the provisions set out in the regulations. These do not have an impact on the proposals we consulted on. In particular, we have made the following changes:
- under regulation 3, we have added the definition of “station” and “apparatus”;
 - we have omitted regulation 6(b) as we considered it more appropriate for that requirement to be set out in the licence conditions rather than in these regulations; and
 - we have modified regulation 7(a)(ix) to clarify that such regulation authorises the particular type of partial transfer described therein (i.e. a combination of spectrum segmentation and geographical segmentation) only in relation to the licence classes set out in Part 13.

Final regulations

- 4.8 The Trading Regulations will have the effects described below.
- 4.8.1 Regulation 2 revokes the 2004 Trading Regulations and any subsequent amending regulations.
- 4.8.2 In line with the 2004 Trading Regulations, Regulation 3 provides for the definition of “concurrent holders”. In addition, it also provides for the definition of “station” and “apparatus”.
- 4.8.3 In line with the 2004 Trading Regulations, Regulation 4 authorises two types of total transfer (i.e. a transfer of all rights and obligations arising by virtue of a wireless telegraphy licence) in relation to the licence classes set out in Parts 3 to 21 of Schedule 2:
- (i) a transfer in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer (“outright transfer”); and
 - (ii) a transfer in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer (“concurrent transfer”).
- 4.8.4 In line with the 2004 Trading Regulations, Regulation 5 authorises the “outright transfer” of the rights and obligations arising by virtue of a Concurrent Spectrum Access licence.
- 4.8.5 Regulation 6 is a new provision which authorises the “concurrent transfer” of the rights and obligations arising by virtue of a Satellite Complementary Ground Components licence.
- 4.8.6 Regulation 7 authorises certain types of partial transfer of rights and obligations in relation to the frequency bands set out in the relevant Part of Schedule 2:

- for the licence classes set out in Parts 3 to 9 of Schedule 2³⁷, regulation 7(a)(i) authorises the partial transfer of rights and obligations relating to whole frequency channels;
- for Scanning Telemetry licences (Part 3), regulation 7(a)(ii) authorises the partial transfers of rights and obligations relating to part frequency channels which must have a bandwidth of 12.5 kHz (or a multiple thereof);
- for Point-to-point Fixed Links and Self Coordinated links (Part 10), Regulation 7(a)(iii) authorises the transfer of rights and obligations relating to a whole link;
- for Broadband Fixed Wireless Access licences and Spectrum Access licences (Part 11), Regulation 7(a)(iv) authorises the transfer of rights and obligations relating to any part of the licensed frequencies. Regulation 7(a)(v) authorises partial transfers of the rights and obligations arising by virtue of these licences on the basis of part of the licensed geographical area. In relation to these licences, partial transfers of rights and obligations involving both spectrum segmentation (i.e. relating to the licensed frequencies) and geographical segmentation are authorised by regulation 7(a)(vi);
- for Business Radio (Technically Assigned) licences, Coastal Station Radio (UK) licences (Part 12), Business Radio (Area Defined) licences and Coastal Station Radio (UK) Area Defined licences (Part 13), Regulation 7(a)(vii) authorises the partial transfers of the rights and obligations relating to part frequency channels which must have a bandwidth of 6.25 kHz (or a multiple thereof);
- for Coastal Station Radio (International) Area Defined licences (Part 8), Business Radio (Area Defined) licences and Coastal Station Radio (UK) Area Defined licences (Part 13), Regulation 7(a)(viii) authorises the partial transfers of the rights and obligations arising by virtue of these licences on the basis of part of the licensed geographical area, which must be a 50km square part of the total licensed area; and
- for Business Radio (Area Defined) licences and Coastal Station Radio (UK) Area Defined licences (Part 13), Regulation 7(a)(ix) authorises the partial transfers of the rights and obligations relating to both (i) part frequency channels which must have a bandwidth of 6.5 kHz (or a multiple thereof) and (ii) part of the licensed geographical area, which must be a 50km square part of the total licensed area.

4.8.7 Regulations 4 to 7, which authorise transfers, are subject to regulation 8. Regulation 8 sets out particular circumstances in which transfers are not authorised. These are:

- where the licence holder (or all of the concurrent holders) and the transferee have not consented to the transfer (regulation 8(a));

³⁷ Scanning Telemetry, Satellite (Permanent Earth Stations), Satellite (Transportable Earth Station), Satellite (Earth Station) (Non-Fixed Satellite Service), Satellite (Earth Station) (Non-Geostationary), Coastal Station Radio (International) Area Defined and Coastal Station Radio (International).

- where licence fees payable under the Wireless Telegraphy (Licence Charges) Regulations 2005 (the '2005 Fees Regulations') are outstanding or where the licence holder has opted to pay Ofcom its licence fee by instalments. In the latter situations, the licensee could pay up its outstanding instalments under a licence and then approach Ofcom with a proposed transfer (regulation 8(b) and (c));
 - where Ofcom has served notice under paragraph 7 of Schedule 1 to the WT Act of a proposal to revoke or vary the licence but that revocation or variation has not yet been made (regulation 8(d)); and
 - during the short period between a licensee requesting a licence revocation or variation (or consenting to a variation or revocation proposed by Ofcom) and the revocation or variation being implemented, a transfer is also not authorised (regulation 8(e)).
- 4.8.8 Under the 2004 Trading Regulations, a transfer was not authorised where Ofcom had not consented to it being made (regulation 7(f) of the 2004 Trading Regulations). As we have now removed the need for Ofcom to consent to a transfer this provision was no longer required.
- 4.8.9 Regulation 9 sets out the transfer procedure that Ofcom will follow and removes the requirement of obtaining Ofcom's consent to the transfer. In particular, once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 9(1)). In line with the 2004 Trading Regulations, the new regulations require that Ofcom receives a document confirming that all parties to the trade have consented to the proposed transfer. This should be signed by or on behalf of:
- the holder or each concurrent holder of a licence; and
 - the transferee or transferees to whom rights and obligations are to be transferred (regulation 9(e)).
- 4.8.10 Ofcom will also require other information, such as the name and address of the proposed transferee and a description of the type of transfer which is to be effected.
- 4.8.11 The 2004 Trading Regulations also included a requirement to provide Ofcom with any information necessary for Ofcom to determine whether it shall consent to the transfer (regulation 8(1)(f)). The new Trading Regulations do not set out this requirement because we removed the need for Ofcom to consent to a transfer of rights to use spectrum.
- 4.8.12 Once all the information is provided, Ofcom will check the documentation in order to ensure that the mandatory information requirements have been met. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 9(2)).
- 4.8.13 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee. In the case of a partial transfer Ofcom will grant new licences with the appropriate

terms and conditions to both the transferor and the transferee. In the case of a concurrent transfer, Ofcom will also issue a replacement licence to both the transferor and the transferee (regulation 9(3)).

- 4.8.14 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed. We will also update the public register to ensure that the new licence holdings are reflected.
- 4.8.15 Schedule 1 provides a list of the statutory instruments revoked by the Trading Regulations.
- 4.8.16 Schedule 2 provides a list of licence classes and their associated frequencies that are transferable under the Trading Regulations and are referenced by the regulations.

Section 5

Scope of the Wireless Telegraphy (Register) Regulations 2012

The legislative framework

- 5.1 We can permit the publication of relevant wireless telegraphy information by making regulations under section 31 of the WT Act. We implemented the changes necessary to introduce spectrum transfers proposed in the Notice by making the Register Regulations. Copies of the Register Regulations are available on <http://www.legislation.gov.uk/>.

Extent of application

- 5.2 The Register Regulations apply to the United Kingdom but not the Channel Islands and the Isle of Man. As spectrum transfers are not permitted in the Channel Islands and Isle of Man, the Register Regulations do not extend to such jurisdictions. This is the effect of regulation 1(2).

Changes made to the Proposed Register Regulations

- 5.3 We have made some minor editorial changes to the draft Register Regulations on which we consulted. For instance, we substituted “*classes*” for “*licence classes*” in Schedule 2 because some of the classes set out in the Schedule are of grants of recognised spectrum access. We also made some corrections and further changes to clarify the provisions set out in the regulations or the structure of Schedule 2. These do not have an impact on the proposals we consulted on. In particular, we have made the following changes:
- under regulation 3, we added a requirement for Ofcom to establish and maintain a public register of relevant information that will apply to the new Register Regulations (in line with regulation 3 of the 2004 Register Regulations). This was inserted to correct an omission that we inadvertently made when we consulted on the draft regulations;
 - under regulation 4(1)(b), we added the word “*both*” to clarify that for the licence class set out in Part 1, we publish information relating to the matters set out in paragraphs (3) in addition to information relating to the matters set out in paragraphs (2). We also corrected an error in Schedule 2 by substituting “Self-Coordinated Links” for “Concurrent Spectrum Access” in Part 1; and
 - we merged together some of the Parts in Schedule 2 to reduce the number of such parts from 14 to 21.

Final regulations

- 5.4 The Register Regulations have the following effects:

- 5.4.1 Regulation 2 revokes the 2004 Register Regulations, as well as any subsequent amending regulation.
- 5.4.2 Regulation 3 provides for Ofcom to establish and maintain a wireless telegraphy register of relevant information.
- 5.4.3 Regulation 4 prescribes the information that is made available in the Wireless Telegraphy Register and includes the following information:
- the identity and contact address of the holder of a wireless telegraphy licence or a grant of recognised spectrum access;
 - the reference number of a wireless telegraphy licence or a grant of recognised spectrum access; and
 - the terms, provisions or limitations of a wireless telegraphy licence or grant of recognised spectrum access which concern the following—
 - the frequency assigned or recognised; and
 - the geographical area of reception or transmission.
- 5.4.4 In addition, for Self-Coordinated Links licences, we also provide the following information:
- the equipment which is authorised for use;
 - the technical parameters relating to the antenna, transmitter and receiver; and
 - the power of transmission (regulation 4(1)(b) and 4(3)).
- 5.4.5 Schedule 1 sets out the statutory instruments revoked by the Register Regulations.
- 5.4.6 Schedule 2 provides a list of licence classes and their associated frequencies that are displayed in the Wireless Telegraphy Register and are referenced by the regulations. In addition to the classes set out in Schedule 1 to the 2004 Register Regulations³⁸, the new Register Regulations include also the following licence classes:

³⁸ Broadband Fixed Wireless Access, Spectrum Access, Point to Point Fixed Links, Scanning Telemetry, Concurrent Spectrum Access, Radio Astronomy, Crown Recognised Spectrum Access, Converted Spectrum Access, Receive-Only Earth Stations Fixed (Fixed Satellite Service), Receive-Only Earth Station Meteorological Satellite Service, Self Coordinated Links, Business Radio (Simple UK), Business Radio (Suppliers Light), Business Radio (Simple Site), Business Radio (Area Defined), Business Radio (Technically Assigned) and Public Wireless Network.

Schedule 2 to the new Register Regulations does not include the licence classes which were set out in Part 1 of Schedule 1 to the 2004 Register Regulations (Public Mobile Operator For Public Wide-Area Paging, Public Mobile Operator for Public Mobile Data, Non-Voice Only Operations, Public Mobile Operator for Public Access Mobile Radio, etc.) because these licence products are no longer issued by Ofcom and have been replaced.

In addition, Schedule 2 to the new Register Regulations does not include the Fixed Wireless Access (including point-to-multipoint systems) licences which were set out in Parts 2 and 3 of Schedule 1 to the 2004 Register Regulations because such licences have been reclassified as Spectrum Access. licences and are therefore referred to in Part 2 of Schedule 2 to the new Register Regulations.

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- Coastal Station Radio (International);
- Coastal Station Radio (International) Area Defined;
- Coastal Station Radio (Marina);
- Coastal Station Radio (UK);
- Coastal Station Radio (UK) Area Defined;
- Coastal Station Radio (Training School);
- Differential Global Positioning System;
- Maritime radio (Suppliers and Demonstration);
- Satellite (Earth Station Network);
- Satellite (Earth Station) (Non-Fixed Satellite Service);
- Satellite (Earth Station) (Non-Geostationary);
- Satellite (Permanent Earth Station);
- Satellite (Transportable Earth Station);
- Satellite (Complementary Ground Components of a Mobile Satellite System); and
- Global navigation Satellite System (GNSS) Repeaters.

Annex 1

RIA Trading and Register Regulations

Introduction

- 5.5 The analysis in this document, which is set out more fully in the consultation documents and statements referred to below, is an impact assessment relating to the Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the ‘Trading Regulations’) and Wireless Telegraphy (Register) Regulations 2012 (the ‘Register Regulations’). Impact assessments are defined in section 7 of the Communications Act 2003 (the ‘Comms Act’).
- 5.6 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. This is reflected in section 7 of the Comms Act, which means that generally we have to carry out impact assessments where our 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. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

Background

- 5.7 This impact assessment relates to our decision to make the following regulations:
- the Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the “Trading Regulations”) – that revoke and replace the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (SI 2004/3154) (the ‘2004 Trading Regulations’)³⁹, as amended; and
 - the Wireless Telegraphy (Register) Regulations 2012 (the “Register Regulations”) – that revoke and replace the Wireless Telegraphy (Register) Regulations 2004 (SI 2004/3155) (the ‘2004 Register Regulations’)⁴⁰, as amended.
- 5.8 The Trading Regulations remove the need to obtain Ofcom’s consent in order to transfer the rights and obligations arising from a licence granted under the Wireless Telegraphy Act 2006 (the ‘WT Act’) and they extend spectrum trading to some licence classes in the maritime and satellite earth station sectors.
- 5.9 Spectrum trading is permitted and governed in the European Union (EU) by Article 9b of the Framework Directive (2002/21/EC as revised by Directive 2009/140/EC)⁴¹. This requires that:
- i) transfers are notified to the national regulatory authority and carried out in accordance with procedures laid down by it;

³⁹ <http://www.legislation.gov.uk/ukxi/2004/3154/made/data.pdf>

⁴⁰ <http://www.legislation.gov.uk/ukxi/2004/3155/made/data.pdf>

⁴¹ http://ec.europa.eu/information_society/policy/ecomm/doc/library/regframeforec_dec2009.pdf

- ii) intended and effective transfers are made public; and
 - iii) competition is not distorted as a result of any transfer or accumulation of spectrum rights (article 5.6 of the revised Authorisation Directive).
- 5.10 The Framework Directive was transposed into UK law via section 168 of the Comms Act. This enabled the introduction of spectrum transfers in the UK. Section 168 was superseded without amendment by section 30 of the WT Act, under which trading is now authorised and regulated.
- 5.11 The 2004 Trading Regulations did 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 extending the application of the relevant sections of the WT Act to these places. In line with this, the Trading Regulations do not apply to Guernsey, Jersey or the Isle of Man.
- 5.12 Ofcom has previously consulted, and made decisions, on the policy behind permitting spectrum transfers that we implemented by making the Trading and Register Regulations. Such policy decisions were outlined in the following documents (which included full impact assessments where relevant and appropriate):
- Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems (MSS)⁴²;
 - Simplifying spectrum trading⁴³;
 - Extending spectrum transfer to the maritime and satellite earth station sectors⁴⁴;
 - Authorisation regime for GNSS repeaters 1164 to 1215 MHz, 1215 to 1300 MHz and 1559 to 1610 MHz⁴⁵.
- 5.13 Before making the regulations, as required by section 122(4) of the WT Act, Ofcom published a statutory notice containing copies of the draft regulations. The “Notice of proposals to make wireless telegraphy trading and register regulations”⁴⁶ (the “Notice”) was published on 20 June 12. The consultation on the draft regulations was open until 22 July 2012.

The citizen and/or consumer interest

- 5.14 Our principal duty under section 3 of the Comms Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. We must, in particular, secure the optimal use for wireless telegraphy of spectrum and have regard to the principle under which all regulatory activities should be targeted only at cases in which action is needed. In making these changes we considered the wider impact beyond immediate stakeholders in the radiocommunications community. We believe that our decision will be of benefit to consumers for the following reasons:

⁴² <http://stakeholders.ofcom.org.uk/binaries/consultations/cgcs2/statement/2ghzstatement.pdf>

⁴³ <http://stakeholders.ofcom.org.uk/consultations/simplify/>

⁴⁴ <http://stakeholders.ofcom.org.uk/consultations/transfer-maritime-satellite/>

⁴⁵ <http://stakeholders.ofcom.org.uk/consultations/gnss-repeaters/>

⁴⁶ <http://stakeholders.ofcom.org.uk/consultations/wireless-telegraphy-trading/>

- i) continued use of spectrum transfers will encourage more efficient use of the radio spectrum making more spectrum available to potential new uses; and
- ii) consolidation of existing regulations makes it easier for stakeholders to understand the regulatory framework and would reduce administrative burdens.

Ofcom's policy objective

5.15 We have a number of duties under section 3 of the WT Act, these include having regard when carrying out our radio spectrum functions to:

- i) the extent that spectrum is available for use; and
- ii) the desirability of promoting the efficient management and use of the spectrum for wireless telegraphy.

5.16 This assessment relates to the impact of the options we have considered in connection with removing the requirement for Ofcom to consent to a trade and making some additional licence classes transferable and publishing certain information which relates to those licences. It does so primarily in the context of the new licence classes that the Trading Regulations make transferable. As we say above, we have already carried out more detailed impact assessments in those areas, in the other documents referred to.

Options considered

5.17 Having made the relevant policy decisions in other documents referred to the principal options open to us in connection with the regulations were:

- i) to make regulations (the Trading Regulations and the Register Regulations) that introduce the ability for some licensees to transfer all or part of the rights and obligations arising from their licences and remove the need for Ofcom to consent to a trade in most instances; or
- ii) to do nothing, which meant keeping the requirement for Ofcom to consent to each individual transfer and not extending trading to the maritime and satellite sectors (not making the regulations and maintaining the list of transferable licences as set out in the 2004 Regulations).

Analysis of options

5.18 The following assesses the impact of options that were open to us by reference to the principal changes made by the regulations.

Make new regulations

Impact of proposals on stakeholders

5.19 Our policy decisions do not in themselves impose any additional burden on licensees. There is no change to the terms of their licences and no action required if licensees do not wish to engage in spectrum trading. The fact that we did not know in advance how many licensees will take advantage of transfer provisions made it difficult to accurately quantify the impacts and benefits.

- 5.20 The removal of the need for Ofcom to consent to a trade simplifies procedures and is likely to reduce the time and resources necessary to complete a transaction. This will reduce the likelihood that some trades may not take place because procedures are too burdensome. The main advantages would appear to lie in the shorter completion times and the greater legal certainty, if time-limited trades do not depend on action by the original transferee to trade the spectrum rights back to the original holder. The former is likely to be particularly important if trades are time-critical.
- 5.21 If a licensee does wish to transfer their licence it would likely impose some transaction costs in dealing with the process. Although we do not charge an administration fee for whole or partial transfers under spectrum trading, licensees are required to notify Ofcom before a transfer is made and on completion of it. We minimise the costs of this process by the use of electronic notification. Despite this, the decision for a licensee to transfers all or part of their licence might increase administration costs.
- 5.22 Permitting partial transfers enables existing licensees to evaluate their spectrum holdings to see whether there are benefits in allowing a third party to utilise parts of their authorisation. For example, a company may have a national licence that covers areas that they do not have any need for. A licensee may wish to sell off these areas for financial benefit. This is an example of where efficient use of spectrum can be driven by market-based mechanisms. Without such an incentive, it would be unlikely that this spectrum would be released unless we imposed a disincentive such as increasing licence fees.
- 5.23 There is a risk that competition may become distorted by one or more organisations gaining market power through the acquisition of rights to use spectrum. If this were to happen then businesses could be subjected to anti-competitive practices and potentially be barred from entry into the market. However, as a competition authority, Ofcom has the powers to take action against anti-competitive behaviour. We believe that the existing legal framework is sufficient to deal with any anti-competitive behaviour which may arise.
- 5.24 Presently, if one company takes over another and the licence is not transferable this can result in cost and risk for the purchaser. If the acquisition involves a change in the legal identity of the licensee, it is necessary to surrender the target's licence and apply to Ofcom for a replacement. First of all the purchaser would be charged a licence fee for the new licence (transferred licences do not incur this as the initial licence fee has already been paid). Secondly, the new owners can have no guarantee that they will have access to the same spectrum that the previous WT licence holder held. This is because the licence is allocated on a first come first served basis and any delay between surrender and issue could result in the spectrum being reallocated to another user. Allowing transfers to happen would mitigate both of these issues.

Benefits of consolidation

- 5.25 Along with the policy changes that we made, the Trading and Register Regulations also revoke and replace the previous legislative provisions. We believe this will make it easier for stakeholders to understand the regulatory environment and reduce the administrative burden it may cause. We have taken into account, in particular, that the 2004 Trading Regulations have been amended seven times since they came into force. We decided to revoke the 2004 Trading Regulations and its amendments, and replaced them with a new single set of consolidated regulations. Accordingly, the Trading Regulations revoke and replace the following regulations:

- The Wireless Telegraphy (Spectrum Trading) Regulations 2004;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2006;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2007;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008; and
- The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.3) Regulations 2008.

5.26 The Register Regulations revoke and replace the following regulations:

- Wireless Telegraphy (Register) Regulations 2004;
- Wireless Telegraphy (Register) (Amendment) Regulations 2006;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006;
- Wireless Telegraphy (Register) (Amendment) Regulations 2007;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2007;
- Wireless Telegraphy (Register) (Amendment) Regulations 2008;
- Wireless Telegraphy (Register) (Amendment) (No 2) Regulations 2008;
- Wireless Telegraphy (Register) (Amendment) (No. 3) Regulations 2008;
- Wireless Telegraphy (Register) (Amendment) Regulations 2009;
- Wireless Telegraphy (Register) (Amendment) Regulations 2011;
- Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2011; and
- Wireless Telegraphy (Register) (Amendment) (No. 3) Regulations 2011

5.27 We believe that this approach will make it easier for stakeholders to find the relevant information about licence transfers. This may reduce costs to business associated with this function as they no longer need to cross refer between twenty different Statutory Instruments.

Risks of proposals

5.28 We believe that the risks involved in going ahead with our proposals were minimal. In particular:

- **anti-competitive action** – By removing the consent stage from the trading process, we note that we lose the opportunity to prevent proposed transactions from proceeding by withholding consent. We also note, however, that the grounds on which we may withhold consent under the previous 2004 Trading Regulations were deliberately curtailed in order to minimise regulatory uncertainty and in no case has it proved necessary so far to withhold consent. In addition, with regard to the specific licence classes that we are making tradable, we do not consider that there is material risk of transfers leading to the control of a bottleneck in services. In any case, Ofcom has previously identified that existing competition policy tools should in general be sufficient to address most anti-competitive behaviour. ; and
- **inefficient use of spectrum** – there is always a small risk of loss of efficiency from spectrum fragmentation resulting from partial transfers. However, this risk is likely to be outweighed by the spectrum efficiency gains from enabling technology that can operate in smaller channel widths. More generally, we consider that user led decisions should be best at allocating resources in these cases.

Impact on Ofcom

- 5.29 We have a duty to lift regulatory restrictions that are no longer necessary. In line with this duty we saw no good reason to continue to prevent licensees from taking advantage of transferring their rights and obligations if they consider it in their interests to do so. We note that, based on experience to date, there has been no need so far to withhold consent to any proposed trade.
- 5.30 In addition, the latest amendment to the European Union (EU) regulatory framework for electronic communications placed a greater emphasis on making spectrum transferrable and as free of technical restrictions as possible. Our decision will reduce the regulatory burden placed on companies by allowing licensees to transfer their spectrum holdings. The authorisation of transfers would contribute to that by reducing overheads associated with acquisitions.
- 5.31 We will incur some one-off costs when making this decision to introduce spectrum transfers for the maritime and satellite sectors. We will need to modify our licensing and online spectrum registers in order to support the process. However, as the underlying systems had already been developed to support transfers in other areas, we did not expect extending this to the new licences to impose any significant cost. Given the volumes of licences involved, these costs are likely to be outweighed by the ongoing administrative savings when dealing with take-overs. This is explained in more detail below.
- 5.32 Enabling transfers for maritime and satellite earth station licence classes will help us to reduce time and costs when dealing with business take-overs. When dealing with these requests we must revoke the existing licence and issue a new licence to the new company. For each new licence application we have to conduct a number of coordination and assignment checks to ensure that the new licence would not cause interference to another licensed user. In addition, we would also need to charge for the new licence and there would be associated costs in processing this payment. By extending spectrum transfers neither of these processes need to be undertaken, as the licence has already been issued and has been through these processes there is no need for us to carry out these checks again.
- 5.33 Removing the consent stage could involve some savings in terms of lower administrative costs per trade, for example the reduced staff time for us to make our

decision, although we do not believe these savings to be substantial. Although the cost per trade for us (and stakeholders) is likely to decline, this reform could also lead to an increase in the volume of trades, which might lead to an increase in total costs. However, we would expect any increase in total costs to be marginal compared to the benefits for citizens and consumers from the larger number of transfers, each of which can plausibly be assumed to be beneficial.

- 5.34 Finally, there are other costs associated with making a Statutory Instrument. Given that we were already planning to amend the 2004 Trading Regulations to implement our decision to remove the need for Ofcom's consent to each individual trade as outlined in our document entitled "Simplifying Spectrum Trading", the addition of the changes to extend trading to other licence classes has led only to a minor increase in cost of making the Statutory Instrument.

Do nothing

- 5.35 The alternative to making the Trading and Register Regulations would be to have done nothing. By doing nothing, we mean not making the regulations and therefore not extending the ability to transfer to the maritime and satellite sectors and not removing the requirement for Ofcom to consent to a transfer.

Impact of proposals on stakeholders

- 5.36 By not making the Trading and Register Regulations we believe that this would not impose any direct additional costs on stakeholders. However, where there is limited supply of spectrum for maritime or satellite earth station services there would be no market mechanism to permit the transfer of this scarce resource. This could have longer term cost implications to the sectors, as the availability of spectrum becomes limited and stakeholders can not access the spectrum they need in order to expand/provide their services.

Impact on Ofcom

- 5.37 If we were not to permit the transfer of the licence classes in question, we would risk harming the efficient use of spectrum. We would not be acting consistently with our wider spectrum management duties, which could have repercussions in terms of economic efficiency. There would also be a reputational cost to Ofcom. By doing nothing we would not be implementing policy changes that we had previously publically consulted and decided upon. This would impact on regulatory certainty for the sectors that we regulate.
- 5.38 By not making regulations there would be no additional cost imposed on Ofcom relating to making a Statutory Instrument and other associated implementation costs. However, these are slight compared with the internal costs associated with the development of the policy proposals that the Trading and Register Regulations would have implemented. By continuing require consent and to prevent maritime and satellite licensees to transfer their spectrum rights, we would not receive internal administrative savings on the costs associated with dealing with company take-overs.

Preferred option

- 5.39 Although difficult to quantify, we believed, for the reasons set out above, and in more detail in the other documents referred to, that the benefits of the previous policy decisions referred to, and of the Trading Regulations and Register Regulations (which implement such decision), are likely to exceed the costs to stakeholders

engaging in the process. Spectrum transfers are not mandatory and any decision on whether to transfer their spectrum to another user rests with the licensee.

- 5.40 We believed that those users and business which do decide to transfer spectrum will only do so if the benefits of transferring outweigh the transaction costs, therefore costs incurred in completing a transfer will always be offset by the benefits. Hence it may plausibly be concluded that our decision can only lead to an overall net benefit. Transfers can in general be expected to benefit citizens and consumers by making it easier for spectrum to migrate to higher value uses.
- 5.41 There are one-off administrative costs associated with making a Statutory Instrument. We considered the implementation costs to be low and offset by the benefits. There may be a slight reduction in spectrum management costs in certain areas.

Policy review

- 5.42 As part of our ongoing approach to making WT Act licences transferable we will periodically review our overall trading policy by monitoring a number of areas including:
- **Volume of licences transferred** - Ofcom will record the percentage of licences and spectrum that are transferred as a proportion of the volume that are permitted to be transferred.
 - **Depth of spectrum markets** - Ofcom will monitor the emergence of intermediaries, including market makers, and technical consultants devoted to trading (both transfers and leasing). The emergence of these kinds of organisations is one indication of a vibrant and efficient spectrum market.
 - **Evidence of value-enhancing trades** - Ofcom anticipates that a successful spectrum market will generate clear examples of value-enhancing transfers as well as reducing costs for businesses.
- 5.43 The impact and extent of transfer activity will vary depending on the licence classes and the demand for spectrum in particular areas. Where spectrum availability is limited we would expect to see an increase in transfer activity.

Equality Impact Assessment

- 5.44 Following an initial assessment of our regulatory proposals we considered that it was reasonable to assume that any impacts on consumers and citizens arising from our decision to make Trading Regulations and Register Regulations would not differ significantly between groups or products of UK consumers and citizens, all of whom would have access to these services, potentially at end-user prices reflective of all general input costs, including opportunity costs of spectrum used.
- 5.45 We do not consider that there is evidence to suggest that costs imposed on stakeholders would differ significantly by these aforementioned groups of consumers and citizens relative to consumers in general. This is because one would not expect the impact of supplying these consumers and citizens to differ significantly between these groups and consumers in general.
- 5.46 Therefore we have not carried out a full Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality

schemes. This was because we were not aware that our decision was intended (or would, in practice) have a significant differential impact on different gender or racial groups, on consumers in Northern Ireland or on disabled consumers compared to consumers in general.