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## **Notice of Ofcom's proposal to make regulations in connection with the award of the 700 MHz and 3.6-3.8 GHz spectrum**

Proposals to make a limitation order and amend the mobile trading and the register regulations

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### **CONSULTATION:**

**Publication Date:** 31 January 2019

**Closing Date for Responses:** 12 March 2019

# 1. Overview

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

## What we are proposing – in brief

On 18 December 2018, we published a consultation on our proposals for the award of 700 MHz and 3.6 GHz spectrum.<sup>1</sup> This document provides formal notice of our proposal to make these further statutory instruments in connection with this award:

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

We are also proposing to update references to the fees payable for the 900 MHz, 1800 MHz, 3.4 GHz and 3.6-3.8 GHz licences in the mobile trading regulations.

We invite comments on these proposals by 12 March 2019.

**This overview is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.**

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

# Contents

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## Section

1. Overview	2
2. Notice	1
3. General effect of the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2019	4
4. General effect of the proposed regulations concerning spectrum trading	6
5. General effect of the proposed Wireless Telegraphy (Register) (Amendment) Regulations 2019	10

## Annex

A1. Responding to this consultation	11
A2. Ofcom's consultation principles	14
A3. Consultation coversheet	15
A4. Consultation questions	16
A5. Draft of The Wireless Telegraphy (Limitation of Number of Licences) Order 2019	
A6. Draft of The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019	
A7. Draft of The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019	
A8. Draft of The Wireless Telegraphy (Register) (Amendment) Regulations 2019	
A9. Glossary	

## 2. Notice

### Summary

- 2.1 On 18 December 2018, we published a consultation document setting out our proposals for awarding wireless telegraphy licences for spectrum in the 700 MHz band and the 3.6-3.8 GHz band (the “**Auction Consultation**”)<sup>2</sup>.
- 2.2 This document provides formal notice of our proposal to make these statutory instruments in connection with this award:
- The Wireless Telegraphy (Limitation of Number of Licences) Order 2019;
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019;
  - The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019; and
  - The Wireless Telegraphy (Register) (Amendment) Regulations 2019.
- 2.3 Today, we are also publishing a separate document giving formal notice of our intention to give effect to the proposals set out in our Auction Consultation by making The Wireless Telegraphy (Licence Award) Regulations 2019 (the “**Auction Regulations**”).

### The proposed statutory instruments

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

- 2.4 We are of the view that it is appropriate to limit the number of licences to be awarded in relation to the 700 MHz and 3.6-3.8 GHz bands for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of these bands. Accordingly, under section 29 of the Wireless Telegraphy Act 2006 (the “**WT Act**”), we must make an order. A draft of the proposed order is set out at Annex A5, and the general effect of this order is set out in Section 3 of this document.

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

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

- 2.5 We propose to include the 700 MHz and 3.6-3.8 GHz bands within The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “**Mobile Trading Regulations**”) since we expect these bands to be used for mobile access in the future. We also propose to bring the frequencies in the 3.6-3.8 GHz band which are currently licensed to UK Broadband

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

within the Mobile Trading Regulations as UK Broadband has indicated to us that it intends to use these frequencies for providing mobile services.

- 2.6 The effect of including these spectrum bands in the Mobile Trading Regulations would be to enable us to conduct an assessment of the impact on competition of any trade before deciding on whether to approve that trade.
- 2.7 In order to give effect to these proposals, this document gives notice of our intention to make two sets of regulations:
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019, which would amend The Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the “**General Trading Regulations**”) to remove the 742–750 MHz, 758–766 MHz and 3605–3689 MHz frequencies from the Schedule to those regulations; and
  - The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019, which would amend the Mobile Trading Regulations to include within their Schedule the 700 MHz and 3.6-3.8 GHz bands. These would include the frequencies currently licensed to UK Broadband.
- 2.8 A draft of the proposed regulations is set out at Annexes A6 and A7, and the general effect of these regulations is set out in Section 4 of this document.

### Updating references to payable fees in the Mobile Trading Regulations

- 2.9 We are also proposing to update references to the relevant regulations prescribing the licence fees payable by the holders of tradable licences to reflect:
- the changes introduced by The Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018<sup>3</sup>; and
  - the changes that we are minded to make by The Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019, on which we are separately consulting.<sup>4</sup>
- 2.10 A draft of the proposed regulations is set out at Annex A7, and the general effect of these regulations is set out in Section 4 of this document.

## The Wireless Telegraphy (Register) (Amendment) Regulations 2019

- 2.11 Ofcom is of the view that certain information relating to the licences awarded pursuant to the Auction Regulations should be published and it has the statutory power to make regulations to implement this policy. Accordingly, we propose to make The Wireless Telegraphy (Register) (Amendment) Regulations 2019. A draft of the proposed regulations is set out at Annex A8, and the general effect of this order is set out in Section 5 of this document.

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<sup>3</sup> S.I. 2018/1368, as amended by S.I. 2019/127.

<sup>4</sup> See Ofcom's consultation document of 17 December 2018, entitled “Annual Licence Fees for UK Broadband's 3.4 GHz and 3.6 GHz spectrum” (Annex A6, in particular); <https://www.ofcom.org.uk/consultations-and-statements/category-2/annual-licence-fees-3.4-ghz-3.6-ghz-spectrum>

## Next steps

- 2.12 In accordance with the requirements of section 122(4) and (5) of the WT Act, this document give notice of our intention to make the proposed order and regulations. We invite comments on the proposed statutory instruments **by 5pm on 12 March 2019**.
- 2.13 Subject to consideration of responses, we intend to bring the order and regulations into force before the start of the bidding process to be set out in the Auction Regulations.
- 2.14 The proposed order and regulations are set out in the Annexes to this document, which is available on Ofcom's website ([www.ofcom.org.uk](http://www.ofcom.org.uk)). A paper copy may be obtained from John Glover, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

## 3. General effect of the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2019

### The legislative framework

- 3.1 Under section 29(1) of the WT Act, we may, if we consider it appropriate for the purpose of securing the efficient use of electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implemented Article 7(1)(c) of the Authorisation Directive.<sup>5</sup>
- 3.2 Under section 29(2) of the WT Act, an order may specify frequencies for the use of which we will grant only a limited number of wireless telegraphy licences.
- 3.3 Where we make an order under this section, the order must set out the criteria which we will apply in determining the limit and the persons to whom licences will be granted. Those criteria must be objectively justifiable, not unduly discriminatory, proportionate and transparent (section 29(4) of the WT Act).

### The proposed order

- 3.4 A draft of the proposed order is set out in Annex A5.
- 3.5 We are planning to grant a limited number of licences after the award of spectrum in the 700 MHz and 3.6-3.8 GHz bands, depending on the outcome of the award process to be held under the Auction Regulations. In making the Auction Regulations, we are required under section 14(3B) of the Act to satisfy ourselves that the criteria to be taken into account in deciding whether or to whom to grant a licence specified in the regulations are objectively justifiable, not unduly discriminatory, proportionate and transparent.
- 3.6 The proposed order consequently provides that we will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedure to be set out in the Auction Regulations.
- 3.7 The frequencies to which the draft order relates include all of the frequencies that we are proposing to make available in the award process as set out in Schedule 1 of the draft Auction Regulations.

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

## Consultation question

*Q1: Do you have any comments on our proposal to make The Wireless Telegraphy (Limitation of Number of Licences) Order 2019, which is set out in draft form in Annex A5?*



## 4. General effect of the proposed regulations concerning spectrum trading

### The legislative framework

- 4.1 Under section 30 of the WT Act, we 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.
- 4.2 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 result in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s).
- 4.3 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 making of the Mobile Spectrum Trading Regulations which came into force on 4 July 2011. Those Regulations were amended in 2013 (S.I. 2013/646) to include the 800 MHz and 2.6 GHz bands, and in 2015 (S.I. 2015/1339) to include the 1452 – 1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands.
- 4.4 Licences covered by the Mobile Trading Regulations are subject to additional conditions in relation to a transfer compared with other licences. In order for a transfer to take place we 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 2003 Act or section 5 of the WT Act.

4.5 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

4.6 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>6</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.

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

### Our policy proposals

4.7 In December 2016, we published an initial consultation on bringing the transfer of rights for mobile services in the 3600 to 3800 MHz band under the Mobile Trading Regulations.<sup>7</sup>

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<sup>6</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.

<sup>7</sup> Ofcom, December 2016. Proposed changes to spectrum trading regulations, Consultation.

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/96087/STR-changes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/96087/STR-changes.pdf)

We received six responses, which are available on our website.<sup>8</sup> Given the lapse of time, we are publishing a further consultation, taking account of the comments to our earlier consultation.

- 4.8 Article 5(6) of the Authorisation Directive requires us to ensure “that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies”. Although our policy to date has been that a competition assessment is not necessary for the generality of trades, we normally include under the Mobile Trading Regulations all bands that can be used for providing mobile services to consumers. This is because we consider that mobile spectrum is different from spectrum in general, in part because we believe that there is a material risk that concentration of mobile spectrum holdings could affect downstream competition.
- 4.9 We therefore propose to make the transfer of rights and obligations relating to wireless telegraphy licences for frequencies in the 700 MHz and 3.6-3.8 GHz bands subject to the requirements of the Mobile Trading Regulations, which would provide for us, in deciding whether to consent to a trade, to take into account, among other things, whether competition is likely to be distorted as a result of the trade.

## The proposed regulations

- 4.10 To give effect to our policy proposals, we propose to amend the General Spectrum Trading Regulations and the Mobile Trading Regulations as follows.

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

- 4.11 We propose to make the following changes to the General Trading Regulations:
- remove the frequency bands 742–750 MHz and 758–766 MHz from Part 11 of Schedule 2; and
  - remove the frequency band 3605–3689 MHz from Part 14 of Schedule 2.

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

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

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<sup>8</sup> Responses are available at <https://www.ofcom.org.uk/consultations-and-statements/category-3/changes-to-spectrum-trading-regulations>. In summary: (i) BT/EE suggested that we should amend the UKB Licence to remove the spectrum leasing provisions; (ii) UKB said that the proposed changes were premature as Ofcom had not yet decided to make the remaining frequencies in the 3.6-3.8 GHz band available for future mobile services through an award; (iii) Vodafone supported the proposed changes; and (iv) some individual respondents suggested that there should be a spectrum cap on spectrum ownership.

## Updating references to payable fees in the Mobile Trading Regulations

- 4.13 Regulations 6(b) and 6(c) of the Mobile Trading Regulations currently refer to the fees payable under The Wireless Telegraphy (Licence Charges) Regulations 2011.<sup>9</sup> We are proposing to update these provisions by adding references to any outstanding sum or any instalment payment due under the following statutory instruments:
- The Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) Regulations 2018<sup>10</sup>; and
  - The Wireless Telegraphy (Licence Charges for the 3.4 GHz Frequency Band and the 3.6 GHz Frequency Band) Regulations 2019, on which we are separately consulting.<sup>11</sup>
- 4.14 These changes would have the effect of updating the Mobile Trading Regulations so that failure to pay the fees payable for the licences for the 900 MHz, 1800 MHz, 3.4 GHz and 3.6-3.8 GHz spectrum on the due date, or the presence of any outstanding sum or instalment to be paid in relation to such fees, would continue to be circumstances where spectrum trade is not authorised.
- 4.15 For clarity, we are proposing to retain reference to any outstanding sum or any instalment payment due under The Wireless Telegraphy (Licence Charges) Regulations 2011 (the **"2011 Regulations"**). This is because:
- the current holder of a "Spectrum Access 3.6 GHz" licence (UK Broadband) is already required to pay fees for use of the 3.6 GHz spectrum and these fees are currently prescribed by the 2011 Regulations. Under our current proposals, these fees would continue to be prescribed by the 2011 Regulations until 30 December 2020, in addition to the fees prescribed by the new regulations; and
  - also the current holders of the 900 MHz or 1800 MHz licences are already required to pay fees under the 2011 Regulations. If any such fees have not been paid to Ofcom at the time we make our final regulations, they would continue to be due under the 2011 Regulations.

## Consultation question

**Q2:** Do you have any comments on our proposal to make The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019 and The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019, which are set out in draft form in Annexes A6 and A7?

<sup>9</sup> S.I. 2011/1128, amended by S.I. 2012/1075, 2013/917, 2014/1295, 2015/1334, 2015/1995, 2016/643 and 2018/1368.

<sup>10</sup> S.I. 2018/1368, as amended by S.I. 2019/127.

<sup>11</sup> See Ofcom's consultation document of 17 December 2018, entitled "Annual Licence Fees for UK Broadband's 3.4 GHz and 3.6 GHz spectrum" (Annex A6, in particular); <https://www.ofcom.org.uk/consultations-and-statements/category-2/annual-licence-fees-3.4-ghz-3.6-ghz-spectrum>

## 5. General effect of the proposed Wireless Telegraphy (Register) (Amendment) Regulations 2019

### The legislative framework

- 5.1 Under section 31(1) of the WT Act, we may, by regulations, make provision for the establishment and maintenance of a wireless telegraphy register. Under section 31(2) of the Act, we may only include relevant information in the register if it is information of a description prescribed by regulations.
- 5.2 The proposed regulations would amend The Wireless Telegraphy (Register) Regulations 2012 (S.I. 2012/2186)<sup>12</sup> (the “**2012 Register Regulations**”), which provide that we shall establish and maintain a public register of relevant information to which those regulations apply and prescribe the relevant information.

### The proposed regulations

- 5.3 A draft of the proposed regulations is set out in Annex A8. The proposed regulations would add a category of licences to the 2012 Register Regulations (those to be awarded at auction under the Auction Regulations) for which information would be published on the register.
- 5.4 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns.

### Consultation question

***Q3:** Do you have any comments on our proposal to make The Wireless Telegraphy (Register) (Amendment) Regulations 2019, which are set out in draft form in Annex A8?*

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<sup>12</sup> Amended by S.I. 2013/640, S.I. 2015/1400 and S.I. 2018/90.

# A1. Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on **12 March 2019**.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/regulations-award-700-mhz-3.6-3.8-ghz>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [radiospectrum.award@ofcom.org.uk](mailto:radiospectrum.award@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- 700 MHz and 3.6-3.8 GHz award  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex A4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact John Glover on 020 7981 3000, or by email to the consultation email address [radiospectrum.award@ofcom.org.uk](mailto:radiospectrum.award@ofcom.org.uk) .

## Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement later this year.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Jacqui Gregory, Ofcom's consultation champion:

Jacqui Gregory  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)



## A2. Ofcom's consultation principles

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

#### **Before the consultation**

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### **During the consultation**

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### **After the consultation**

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A3. Consultation coversheet

### 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 ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

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)

## A4. Consultation questions

**Q1:** Do you have any comments on our proposal to make *The Wireless Telegraphy (Limitation of Number of Licences) Order 2019*, which is set out in draft form in Annex A5?

**Q2:** Do you have any comments on our proposal to make *The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019* and *The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019*, which are set out in draft form in Annexes A6 and A7?

**Q3:** Do you have any comments on our proposal to make *The Wireless Telegraphy (Register) (Amendment) Regulations 2019*, which are set out in draft form in Annex A8?

# A5. Draft of The Wireless Telegraphy (Limitation of Number of Licences) Order 2019

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## STATUTORY INSTRUMENTS

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2019 No. [\*\*\*]

### ELECTRONIC COMMUNICATIONS

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

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

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

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

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

#### Citation, commencement and extent

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

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

#### Limitation of Licences

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

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

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

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(a) 2006 c.36.

(b) S.I. 2019/\* \* \*.

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[Date \* \* \*]

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

## **EXPLANATORY NOTE**

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

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

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

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

# A6. Draft of The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019

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STATUTORY INSTRUMENTS

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2019 No. [\*\*\*]

## ELECTRONIC COMMUNICATIONS

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

*Made* - - - -

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*Coming into force* - -

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

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

#### Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2019 and shall come into force on \* \* \*.

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

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

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

\*\*\*

[Date \* \* \*]

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

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(a) 2006 c.36.

(b) S.I. 2012/2187, amended by S.I. 2015/1338.

## **EXPLANATORY NOTE**

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

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

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

# A7. Draft of The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019

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## STATUTORY INSTRUMENTS

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2019 No. [\*\*\*]

### ELECTRONIC COMMUNICATIONS

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

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

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

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

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

#### Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2019 and shall come into force on \* \* \*.

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

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

#### Amendment to regulation 6

3. In regulation 6 of the principal Regulations—

(a) for paragraph (b) substitute—

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

- (i) the Wireless Telegraphy (Licence Charges) Regulations 2011<sup>(c)</sup>;
- (ii) the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) Regulations 2018<sup>(d)</sup>; or
- (iii) the Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019<sup>(e)</sup>

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

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(a) 2006 c.36.

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

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

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

(e) S.I. [to be specified in the final regulations].



(b) for paragraph (c) substitute—

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

- (i) regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2011;
- (ii) regulation 6(1)(b) of the Wireless Telegraphy (Licence Charges for the 900 MHz frequency band and the 1800 MHz frequency band) Regulations 2018; or
- (iii) regulations 5(4), 6(4), 7(4) or 9(1)(b) of the Wireless Telegraphy (Licence Charges for the 3.4 GHz frequency band and the 3.6 GHz frequency band) Regulations 2019;”.

#### **Amendment to the Schedule**

4. For the Schedule to the principal Regulations substitute—

### **“SCHEDULE** Regulations 4 and 5 **Licence Classes and Frequency bands**

<i><b>Column 1</b></i>	<i><b>Column 2</b></i>
<i><b>Licence Classes</b></i>	<i><b>Frequency bands</b></i>
Public Wireless Network	703–733 MHz
Spectrum Access	738–788 MHz
	791–821 MHz
	832–862 MHz
	880–915 MHz
	925–960 MHz
	1452–1492 MHz
	1710–1781.7 MHz
	1805–1876.7 MHz
	1899.9–1980 MHz
	2110–2170 MHz
	2350–2390 MHz
	2500–2690 MHz
	3410–3800 MHz”.

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[Date \* \* \*]

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

#### **EXPLANATORY NOTE**

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

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

Band and the 1800 MHz Frequency Band) Regulations 2018 (S.I. 2018/1368, as amended by S.I. 2019/127) and the Wireless Telegraphy (Licence Charges for the 3.4 GHz Frequency Band and the 3.6 GHz Frequency Band) Regulations 2019 (S.I. 2019/[*to be specified in the final regulations*]).

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

# A8. Draft of The Wireless Telegraphy (Register) (Amendment) Regulations 2019

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STATUTORY INSTRUMENTS

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2019 No. [\*\*\*]

## ELECTRONIC COMMUNICATIONS

### The Wireless Telegraphy (Register) (Amendment) Regulations 2019

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

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

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by sections 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006<sup>(a)</sup> (the “Act”).

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

#### Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Register) Regulations 2019 and shall come into force on \* \* \*.

#### Amendment of the Wireless Telegraphy (Register) Regulations 2012

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

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

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Group Director of Spectrum Group

[Date \* \* \*]

For and by the authority of the Office of Communications

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(a) 2006 c.36.

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

## **EXPLANATORY NOTE**

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

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

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

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

## A9. Glossary

**2003 Act** means The Communications Act 2003;

**2012 Register Regulations** means The Wireless Telegraphy (Register) Regulations 2012;

**Auction Consultation** means the consultation document published on 18 December 2018<sup>13</sup>;

**Auction Regulations** means The Wireless Telegraphy (Licence Award) Regulations 2019 that we are proposing to make;

**Authorisation Directive** means the Directive of the European Parliament and the Council of 7 March 2002 on the authorisation of electronic communications networks and services 2002/20/EC;

**General Trading Regulations** means The Wireless Telegraphy (Spectrum Trading) Regulations 2012;

**Mobile Trading Regulations** means The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011;

**WT Act** means The Wireless Telegraphy Act 2006.

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<sup>13</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/award-700mhz-3.6-3.8ghz-spectrum>