

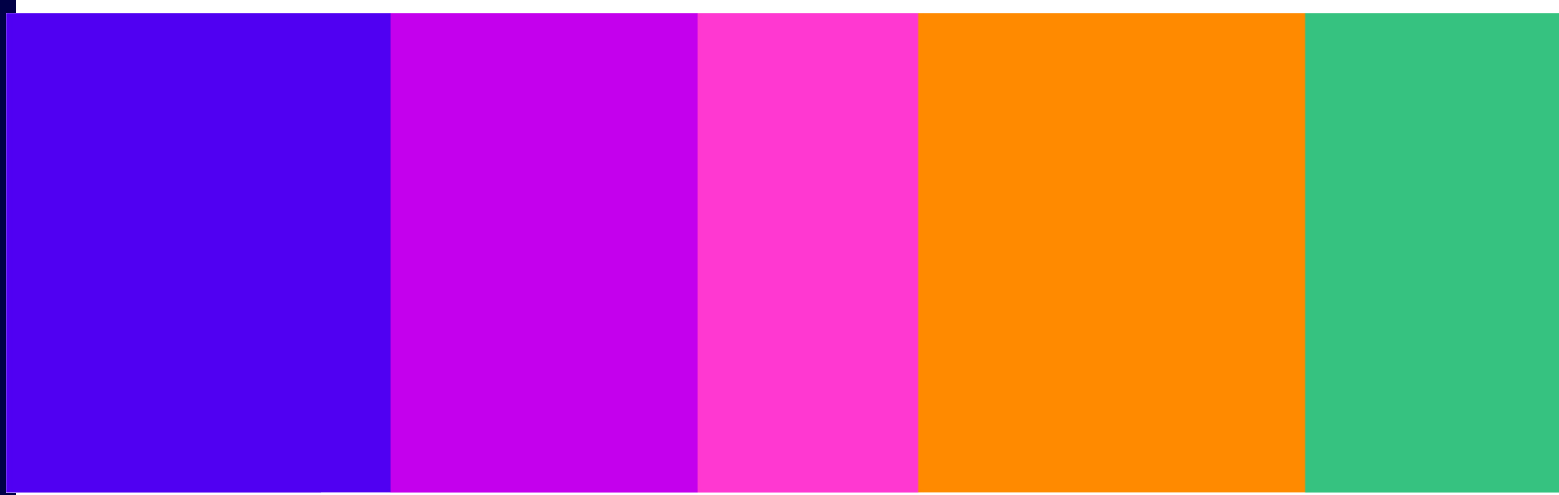
Notice of Ofcom's proposal to make regulations for mmWave spectrum

Proposals to make a Limitation Order and
amend the Mobile Trading Regulations

Consultation

Published: 16 April 2024

Closing date for responses: 28 May 2024



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1. Overview

- 1.1 This document provides notice of, and invites stakeholders' views on, Ofcom's proposals to make two statutory instruments in connection with making the 26 GHz and 40 GHz bands available for new services, including 5G.

What we are proposing – in brief

In [March 2023](#) and [September 2023](#), we published our decisions for making the 26 GHz and 40 GHz bands available for new uses following a consultation process. This document provides formal notice of our proposal to make the following statutory instruments to implement our approach to mmWave spectrum in relation to the licences for the use of the 25.1-27.5 GHz and 40.5-43.5 GHz bands in major towns and cities (the “high density areas”) which we will award in our future auction:

- a) The Wireless Telegraphy (Limitation of Number of Licences) Order 2024; and
- b) The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2024.

We invite comments on these proposals by **28 May 2024**.

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

2. Notice

Summary of our policy decisions

Ofcom's approach to authorising mmWave spectrum for new services

- 2.1 Ofcom is responsible for managing the use of the “radio spectrum”, i.e. the airwaves over which communications signals are transmitted.
- 2.2 This Notice concerns the so-called millimeter-wave (“**mmWave**”) spectrum within the 26 GHz band (24.25-27.5 GHz) and the 40 GHz band (40.5-43.5 GHz), which has until now been predominantly used for fixed links.
- 2.3 These bands have both been identified for mobile services globally and for 5G in Europe. In light of this international harmonisation, we have decided to enable the industry to use the 26 GHz and 40 GHz bands for new services, including 5G.
- 2.4 In particular, in our [March 2023 statement](#) (Section 3) and [September 2023 statement](#) (Section 7), we set out how we will allocate mmWave spectrum in the 26 GHz and 40 GHz bands to best support new uses. In summary:
 - a) In the 68 major towns and cities¹ (the “**high density areas**”), in which we expect the highest volume of mmWave deployment, we will both: (i) assign local licences on a first come, first served basis, using our [Shared Access licensing framework](#) and (ii) award citywide licences by auction (the “**award licences**”);
 - b) Elsewhere in the UK (the “**low density areas**”), where we expect deployments to be sparser, we will assign local licences on a first come, first served basis, using our Shared Access licensing framework;
 - c) We will also enable access to the auctioned spectrum through our [Local Access licensing framework](#).
- 2.5 In summary, we will make the 26 GHz and 40 GHz bands available for new services through a combination of award licences, Shared Access licences and Local Access licences. The diagrams set out in Figure 3.2 of the [March 2023 statement](#) (p. 27) and Figure 2.2 of the [September 2023 statement](#) (p. 12) provide a visual representation of how we will authorise use of the 26 GHz and 40 GHz bands respectively.

Implementing some aspects of Ofcom's authorisation approach in relation to the award licences

- 2.6 As set out in our [September 2023 statement](#) (paras. 1.24-1.25), there are various statutory instruments that we need to make to give effect to our policy decisions on how we intend to authorise use of mmWave spectrum. These include, in particular, the statutory instrument which will give effect to our decisions on the auction design set out in our [November 2023 statement](#) and our [April 2024 statement](#) (the “**Auction Regulations**”).

¹ See Table A6.8 and Figure A6.7 at pages 31 and 33 of [Annex A6](#) to our March 2023 statement. For the geographical boundaries of each high density area, see [Annex A10](#) to the September 2023 statement.

- 2.7 The two statutory instruments proposed in this Notice are intended to implement some of our policy decisions in relation to the **award licences**.² We published a sample of these licences in [Annex A4](#) to the September 2023 statement.
- 2.8 Specifically, the purpose of this Notice is to consult on the order and regulations that we are proposing to make for implementing our policy decision to **grant a limited number of award licences**, with their precise number being determined through the procedure that will be set out in the Auction Regulations, and our policy decision to **make the award licences tradable**.
- 2.9 We will separately give formal notice of our proposals to make any further statutory instruments relating to the licensing of mmWave spectrum.

Proposed statutory instruments to implement our policy decisions

- 2.10 This document provides formal notice of our proposal to make the following statutory instruments to implement some elements of Ofcom’s approach to mmWave spectrum in relation to the award licences:
- a) The Wireless Telegraphy (Limitation of Number of Licences) Order [2024]; and
 - b) The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2024].

The Wireless Telegraphy (Limitation of Number of Licences) Order [2024]

- 2.11 We are of the view that it is appropriate to limit the number of licences to be awarded in the 25.1-27.5 GHz and 40.5-43.5 GHz bands for the use of such frequencies in “high density areas” as this would secure an efficient use of spectrum. 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. Our impact assessments are set out in Annex A7 and a draft of the regulatory impact assessment accompanying the proposed order is set out in Annex A8.

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2024]

- 2.12 This document also gives notice of our intention to make the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations 2024. The proposed regulations would amend the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “**Mobile Trading Regulations**”) to include within their Schedule the “Spectrum Access High Density” licences which will authorise use of the 25.1–27.5 GHz and the 40.5-43.5 GHz frequency bands in high density areas.
- 2.13 We propose to include the award licences within the Mobile Trading Regulations because we expect the bands that will be authorised under those licences (25.1-27.5 GHz and 40.5-43.5 GHz) to be used for mobile access.
- 2.14 The main effect of including the award licences in the Mobile Trading Regulations is to make them tradable. As set out in our [March 2023 statement](#) (para. 11.9) and [September 2023](#)

² In [Annex A4](#) to the September 2023 statement we published a sample award licence.

[statement](#) (para. 5.6), we also note that bringing the award licences within the Mobile Trading Regulations would enable us to conduct an assessment of the impact on competition of any trade before deciding on whether to approve that trade and would allow both partial and total transfers.

- 2.15 A draft of the proposed regulations is set out at Annex A6, and the general effect of these regulations is described in more detail in Section 4 of this document. Our impact assessments are set out in Annex A7 and a draft of the regulatory impact assessment accompanying the proposed regulations is set out in Annex A8.

Next steps

- 2.16 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 **28 May 2024**.
- 2.17 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.
- 2.18 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).
- 2.19 A paper copy of the proposed order and regulations may be obtained from the following address, by previously contacting us (either by email to mmWave.allocation@ofcom.org.uk or by posting a letter to the same address, marked with "Enabling mmWave spectrum for new uses"): Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

3. General effect of the proposed order

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.
- 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 In our [May 2022 consultation](#) (paras. 3.22-3.32), we considered three options for making citywide licences available in the 26 GHz and 40 GHz bands: (i) an auction, (ii) a comparative selection process, and (iii) a first come, first served process. In our [March 2023 statement](#) (paras. 3.53-3.56), following consultation, we concluded in favour of holding a spectrum auction. We believe that an auction is the best way to allocate this spectrum because in an auction the spectrum is awarded to the participant who bids the highest for it, which is likely to be the user who can obtain the most value from using the spectrum and provide the most value to society.
- 3.6 Therefore, we are planning to grant a limited number of “Spectrum Access High Density” licences authorising the use of the 25.1-27.5 GHz and 40.5-43.5 GHz bands in high density areas. The precise number of these licences will depend on the outcome of the award process to be held in accordance with 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.
- 3.7 The proposed order consequently provides that we will only grant a limited number of “Spectrum Access High Density” licences for these frequencies, the precise number being determined by the application of the procedure to be set out in the Auction Regulations.
- 3.8 The frequencies to which the draft order relates (i.e., those falling within the 25.1-27.5 GHz and 40.5-43.5 GHz bands) include all of the frequencies that we will make available in the award process.

Consultation question

Consultation question 1: Do you have any comments on our proposal to make The Wireless Telegraphy (Limitation of Number of Licences) Order [2024], which is set out in draft form in Annex A5?

4. General effect of the proposed regulations

The legislative framework

- 4.1 Section 30A of the WT Act imposes a general duty on Ofcom to allow spectrum leasing or trading, except in specified cases (for example, where the licence duration does not exceed 12 months). Under section 30 of the WT Act, we may by regulations authorise the transfer of the rights and obligations arising by virtue of a wireless telegraphy licence from the licence-holder to another person. Transfers that fail to comply with these regulations (or with certain conditions in licences) will be void (section 30(4) and (5) of the WT Act).

The General Trading Regulations for non-mobile spectrum

- 4.2 We began the implementation of spectrum trading for selected licence classes by making 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 Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the “**General Trading Regulations**”).³
- 4.3 Under the General Trading Regulations, licensees in specific classes may carry out:
- a) **outright total transfers**, i.e. transfers of all of the rights and obligations arising under a licence to a third party;
 - b) **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);
 - c) **outright partial transfers**, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
 - d) **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).
- 4.4 Ofcom’s [Trading Guidance Notes](#) (see Table 2) summarise the types of transfer allowed for each of the licence classes falling under the General Trading Regulations.

The Mobile Trading Regulations

- 4.5 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 Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (S.I. [2011/1507](#)) which came into force on 4 July 2011 (the “**Mobile Trading Regulations**”). Those Regulations were amended in 2013 (S.I. [2013/646](#)) to include the 800 MHz and 2.6 GHz bands, in 2015 (S.I. [2015/1339](#)) to include the 1452 – 1492 MHz, 2350-2390 MHz and 3410-3600 MHz bands, and in 2019 (S.I. [2019/951](#)) to include the 703–733 MHz, 738–788 MHz and 3600–3800 MHz bands.

³ S.I. [2187/2012](#), subsequently amended by S.I. [1338/2015](#) and S.I. [950/2019](#).

- 4.6 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 must take into account whether:
- a) 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;
 - b) 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;
 - c) 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;
 - d) 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;
 - e) competition is likely to be distorted as a result of the transfer; and
 - f) it is requisite or expedient to refuse consent to the transfer:
 - i) in the interests of national security;
 - ii) 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
 - iii) 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.
- 4.7 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.
- 4.8 The Mobile Trading Regulations authorise both outright and concurrent transfers, as well as total and partial transfers. Partial trades can be used to transfer the rights and obligations concerning only certain frequencies or geographical areas covered by the licence.

Proposal to amend the Mobile Trading Regulations to include the award licences

- 4.9 In our [March 2023 statement](#) (paras. 11.8-11.10), we proposed to make the award licences tradable by including them in the Mobile Trading Regulations. We said that this would mean that licensees could trade the rights and obligations under their award licences with consent from Ofcom and that before giving consent to a trade, Ofcom may consider whether competition is likely to be distorted as a result of the trade. We also noted that including the award licences in the Mobile Trading Regulations would enable licensees to agree partial trades, in addition to total trades. We confirmed this position in our [September 2023 statement](#) (Section 5).
- 4.10 To give effect to our policy decisions, we propose to insert the “Spectrum Access High Density” licences that will authorise use of the 25.1-27.5 GHz band and the 40.5-43.5 GHz bands into the Schedule to the Mobile Trading Regulations, so that the trading process set out in these regulations would apply to the award licences.

- 4.11 In line with the current version of the Mobile Trading Regulations (reg. 2), the proposed regulations would apply in the United Kingdom but not the Channel Islands and the Isle of Man.

Consultation question:

Consultation question 2: Do you have any comments on our proposal to make The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2024], which are set out in draft form in Annex A6?

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 28 May 2024**.
- A1.2 You can download a response form from [Enabling mmWave spectrum for new uses: Statement and consultation on auction design](#)
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 mmWave.allocation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Enabling mmWave spectrum for new uses
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 of a response submitted to us by email.
- 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 X. 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 us by email to mmWave.allocation@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. 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 responses on the Ofcom website at regular intervals during and after the consultation period.
- 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 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A1.15 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 in our Terms of Use.

Next steps

- A1.16 Following this consultation period, Ofcom plans to publish a statement later this year.
- A1.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A2.
- A1.19 If you have any comments or suggestions on how we manage our consultations, please email us at 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.
- A1.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A1.21 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: 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 an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- 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 the responses on our website at regular intervals during and after the consultation period. 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 you selected 'Part of the response', please specify 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)?

Yes No

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 aims to publish responses at regular intervals during and after the consultation period. 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

A4.1 We invite responses to the questions listed below.

Question 1: Do you have any comments on our proposal to make The Wireless Telegraphy (Limitation of Number of Licences) Order [2024], which is set out in draft form in Annex A5?

Question 2: Do you have any comments on our proposal to make The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2024], which are set out in draft form in Annex A6?

A5. Draft of the proposed order

[Published as a separate document.]

A6. Draft of the proposed regulations

[Published as a separate document.]

A7. Impact assessments

Equality impact assessment

- A7.1 Section 149 of the Equality Act 2010 (the “**2010 Act**”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation, and other prohibited conduct related to the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- A7.2 Section 75 of the Northern Ireland Act 1998 (the “**1998 Act**”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act.
- A7.3 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- A7.4 We have given careful consideration to whether our proposals would have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons.
- A7.5 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our [impact assessment guidance](#)).
- A7.6 In particular, section 3(4) of the Communications Act 2003 also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
- a) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
 - b) the needs of persons with disabilities, older persons and persons on low incomes; and
 - c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.
- A7.7 We do not consider that our proposals will affect any specific groups of persons (including persons that share protected characteristics under the 2010 Act or the 1998 Act) differently to the general population.
- A7.8 The statutory instruments that we are proposing to make are intended to implement Ofcom’s decisions to make the 26 GHz and 40 GHz bands available for new services, including 5G. As set out in our [March 2023](#) statement (para. 2.4) and [September 2023](#) statement (para. 1.1), making mmWave spectrum available for new uses has the

potential to deliver significant benefits to people and businesses in the UK. In particular, it can offer operators the opportunity to acquire very large contiguous blocks of spectrum, which can enable services requiring very high capacity and speeds. The benefits of such services are likely to apply equally to all users. We therefore do not consider that our policies will have negative impacts on any groups with protected characteristics.

Welsh language impact assessment

- A7.9 Ofcom is required to take Welsh language considerations into account when formulating, reviewing, or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).⁴
- A7.10 We do not consider our proposals have any impact on opportunities for persons to use the Welsh language or treat the Welsh language no less favourably than the English language. We also do not think there are ways in which our proposals could be formulated to have, or increase, a positive impact, or, not have adverse effects or decrease any adverse effects. This is because our proposals relate to the initial allocation, and subsequent transfer, of spectrum licences that will be available to anyone willing to participate in our future mmWave auction and anyone willing to acquire from the auction winners the rights and obligations arising from the auctioned licences.

Further impact assessments

- A7.11 We have already considered the impact of the policy decisions which the proposed statutory instruments are intended to implement as part of the decision-making process leading to our [March 2023](#) statement (para. 2.77) and our [September 2023](#) statement (para. 1.23). In addition, we are publishing a draft of the regulatory impact assessments accompanying our proposed statutory instruments (see Annex A8).

⁴ See Standards 84 – 89 of [Hysbysiad cydymffurfio](#) (in Welsh) and [compliance notice](#) (in English). Section 7 of the Welsh Language Commissioner's [Good Practice Advice Document](#) provides further advice and information on how bodies must comply with the Welsh Language Standards.

A8. Draft regulatory impact assessment

Introduction

- A8.1 The analysis set out below represents a regulatory impact assessment following Ofcom’s notice of proposals to make the Wireless Telegraphy (Limitation of Number of Licences) Order [2024] (the “**Limitation Order**”) and the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2024] (the “**Trading Regulations**”), published on 16 April 2024 (the “**April 2024 Notice**”).
- A8.2 Regulatory impact assessments are a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by many regulators. In producing the assessment in this document, Ofcom has had regard to such general guidance as it considers appropriate, including [Cabinet Office guidance](#).

Proposal, purpose and intended effect

The Limitation Order

- A8.3 In Ofcom’s [March 2023](#) statement (para. 3.59) and [September 2023](#) statement (para. 2.10), Ofcom set out its decisions to make available, by means of an auction, citywide licences (the “Spectrum Access High Density” licences) authorising use of the 25.1-27.5 GHz band and the 40.5-43.5 GHz band in the 68 major towns and cities (the “**high density areas**”),⁵ in which we expect the highest volume of mmWave deployment.
- A8.4 In Ofcom’s [November 2023](#) statement (Sections 3-5) and April 2024 statement, Ofcom set out the design of the auction for awarding the Spectrum Access High Density licences in the 26 GHz and 40 GHz bands. This auction design will be given effect by means of the Auction Regulations, which will set out the rules and procedures that Ofcom will apply in that auction.
- A8.5 The Limitation Order that Ofcom is proposing to make will complement the Auction Regulations. In particular, the Limitation Order is intended to allow Ofcom to limit the number of users of the 25.1-27.5 GHz band and the 40.5-43.5 GHz band in high density areas through the award of licences in a spectrum auction, as opposed to exempting from licensing the use of radio equipment in these bands (and so allowing an unlimited number of users) or adopting an alternative selection process for allocating licences, such as a comparative selection process or a first come, first served process (which we considered in our [May 2022 consultation](#); paras. 3.22-3.32).
- A8.6 The purpose of limiting the number of users in this way is to secure efficient use of the electro-magnetic spectrum and efficient use, in particular, of the relevant mmWave bands. In essence, we consider that limiting the number of authorised users of mmWave

⁵ See Table A6.8 and Figure A6.7 at pages 31 and 33 of [Annex A6](#) to our March 2023 statement. For the geographical boundaries of each high density area, see [Annex A10](#) to the September 2023 statement.

spectrum in high density areas is the only practical way of making this spectrum available for mobile use.

- A8.7 The Limitation Order provides that, in determining the number of “Spectrum Access High Density” licences to be granted for the use of frequencies in the 25.1-27.5 GHz band and the 40.5-43.5 GHz band, and the persons to whom the licences will be granted, Ofcom shall apply the procedure set out in the Auction Regulations.
- A8.8 Therefore, the intended effect of the proposed Limitation Order is to allow Ofcom to select the holders of the award licences by holding an auction in accordance with the Auction Regulations.

The Trading Regulations

- A8.9 In our [March 2023 statement](#) (paras. 11.8-11.10), we proposed to make the award licences tradable by including them in The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “**Mobile Trading Regulations**”). We said that this would mean that licensees could trade the rights and obligations under their award licences with consent from Ofcom and that before giving consent to a trade, Ofcom may consider whether competition is likely to be distorted as a result of the trade. We also noted that including the award licences in the Mobile Trading Regulations would enable licensees to agree partial trades, in addition to total trades. We confirmed this position in our [September 2023 statement](#) (Section 5).
- A8.10 The Trading Regulations that Ofcom is proposing to make would have the effect of making the award licences tradable by extending the transfer process set out in the Mobile Trading Regulations to that new licence class (i.e., the “Spectrum Access High Density” licences). The transfer process applying under the Mobile Trading Regulations is summarised in Ofcom’s [Trading Guidance Notes](#) (see Section 3).

Costs to Ofcom

Costs associated with the Limitation Order

- A8.11 The costs to Ofcom of limiting the number of “Spectrum Access High Density” licences in the 26 GHz and 40 GHz bands relate mainly to the costs of clearing the spectrum, carrying out the award process and making statutory instruments, including the Auction Regulations and the proposed Limitation Order.
- A8.12 We consider these administrative costs to be small relative to the potential benefits of making the award licences available. In particular, in our [March 2023 statement](#) (paras. 2.1-2.8) we said that making the 26 GHz and 40 GHz bands available for new uses has the potential to deliver significant benefits to UK people and businesses, noting that:
- a) These bands can offer operators the opportunity to acquire very large contiguous blocks of spectrum, which can enable services requiring very high capacity and speeds.
 - b) As demand for data continues to grow, mmWave spectrum will be an important component in mobile operators’ ability to meet future growth in demand for mobile broadband.
 - c) This spectrum also has strong potential to support the development of innovative services using mobile technology.

A8.13 We also note that alternative approaches which could involve lower administrative costs to Ofcom, such as exempting the use of the 26 GHz and 40 GHz bands from the requirement to hold a wireless telegraphy licence, would not be effective in delivering these benefits.

Costs associated with the Trading Regulations

A8.14 Ofcom would incur little cost as a result of making the proposed Trading Regulations because the framework for mobile spectrum trading has already been set up.⁶ In particular, Ofcom has already made the Mobile Trading Regulations, published [guidance on the transfer process](#) and created a register of trades (the “Transfer Notification Register” within the [Spectrum Information Portal](#)).

A8.15 There are one-off administrative costs associated with making statutory instruments. However, we consider these administrative costs to be small, relative to the overall benefits of mobile trading to the mobile sector and consumers. Several trades of mobile spectrum have occurred in the UK, and such trades have the potential to enable a more efficient use of spectrum.

Cost to business, including small businesses and the voluntary sector

Costs associated with granting a limited number of award licences

Clearing costs and auction prices

A8.16 The costs to business associated with making the 26 GHz and 40 GHz bands available by issuing a limited number of “Spectrum Access High Density” licences relate mainly to the cost imposed on existing licensees for clearing those fixed wireless links that will not be able to coexist with mobile technology, and the prices which the auction winners will be required to pay in accordance with the Auction Regulations.

A8.17 In our [March 2023 statement](#) (paras. 5.75-5.81 and 7.131-7.147), we considered the costs to existing licensees of moving their fixed links and concluded that such costs are proportionate in light of the potential benefits of making the 26 GHz and 40 GHz bands available for mobile use. We also considered the costs from participating in the auction for awarding the new award licences, noting that it is appropriate for licensees to pay the market value of the spectrum they use (paras. 7.153-7.156).

Businesses sectors which are most likely to be affected

A8.18 As set out in our [March 2023 statement](#) (paras. 2.5), the business sector which is most likely to be affected by the Limitation Order is the mobile industry, since we expect that mmWave spectrum will be an important component in mobile operators’ ability to meet future growth in demand for mobile broadband. Therefore, mobile operators are likely to be interested in participating in the auction.

⁶ See the information on [“Spectrum trades”](#) published on Ofcom’s website.

- A8.19 This spectrum also has strong potential to support the development of innovative services using mobile technology ([March 2023 statement](#), paras. 2.5). As a consequence, other business sectors, including small businesses and the voluntary sector, are likely to benefit from a more efficient supply of communications services delivered by means of mmWave spectrum.
- A8.20 While we will authorise the award winners to use the 26 GHz and 40 GHz bands in high density areas, we will also make this spectrum available in the same areas under the Local Access licensing framework, and in the rest of the country under the Spectrum Access licensing framework. Therefore, although we will limit the number of award winners (as opposed to exempting from licensing the use of radio equipment in these bands), we will give all stakeholders the opportunity to use mmWave spectrum under other licensing schemes. This should mitigate the effect of the proposed Limitation Order on those stakeholders who will not win any “Spectrum Access High Density” licence.

Costs associated with the making the award licences tradable

- A8.21 As set out above, the business sector which is most likely to benefit from the proposed Trading Regulations is the mobile industry, since we expect that mmWave spectrum will be an important component in mobile operators’ ability to meet future growth in demand for mobile broadband ([March 2023 statement](#), paras. 2.5).
- A8.22 Making the award licences tradable under the Mobile Trading Regulations, instead of the General Trading Regulations⁷, could lead to additional costs of supplying information to Ofcom as part of a licence transfer application. This is because the licences falling under the Mobile Trading Regulations require Ofcom’s consent before any transfer can be authorised and [regulation 7\(1\)\(f\)](#) of the Mobile Trading Regulations requires the licensee to provide all information necessary for Ofcom to determine whether or not to consent to the transfer.
- A8.23 However, we believe these costs to be relatively minor and to be required in order to fulfil Ofcom’s statutory duties, including our duty to promote competition⁸ (by assessing whether competition is likely to be distorted as a result of any transfer⁹).
- A8.24 We do not consider that our proposal to make the award licences tradable under the Mobile Trading Regulations will have any material cost implications for small businesses or the voluntary sector.

Conclusion

- A8.25 Having assessed the impact of making the proposed Limitation Order and Trading Regulations, Ofcom considers that the potential benefits of awarding a limited number of “Spectrum Access High Density” licences and making them tradable under the Mobile Trading Regulations justify the associated costs.

⁷ The Wireless Telegraphy (Spectrum Trading) Regulations 2012.

⁸ Communications Act 2003, section 3(1)(b).

⁹ [Regulation 8\(e\)](#) of the Mobile Trading Regulations.