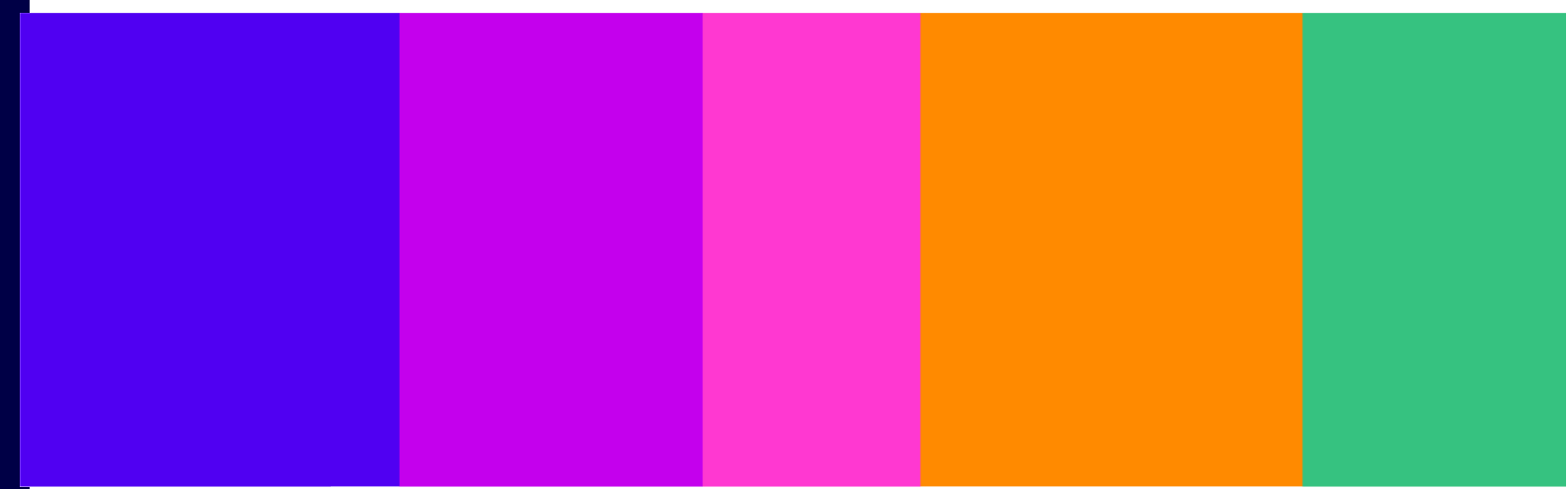


Notice of Ofcom's decision to make regulations for mmWave spectrum

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

Statement

Published: 3 December 2024



Contents

Section

1. Overview.....	3
2. Notice	4
3. The order	7
4. The regulations.....	9

Annex

A1. Draft of the order	12
A2. Draft of the regulations	14

1. Overview

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

What we have decided – in brief

Between March 2023 and April 2024, we published our decisions for making the 26 GHz and 40 GHz bands available for new uses following various consultation processes. In April 2024, we also published a [consultation](#) to give formal notice of our proposal to make the following statutory instruments in connection with the award of spectrum in the 26 GHz and 40 GHz bands:

- a) The Wireless Telegraphy (Limitation of Number of Licences) Order [2025]; and
- b) The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2025].

In particular, these statutory instruments are intended to implement our approach to mmWave spectrum in relation to the “Spectrum Access High Density” 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.

This document provides formal notice of our decision to make the proposed statutory instruments. We have not received any comments from stakeholders in response to our [April 2024 consultation](#).

The overview section in this document is a simplified high-level summary only. The decisions which we have made, 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 (25.1-27.5 GHz)¹ 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 cities² (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

¹ The 26 GHz band starts at 24.25 GHz, but this Notice concerns only the part of the band which we will make available by auction, which starts at 25.1 GHz.

² See Ofcom's booklet entitled [“mmWave Spectrum Access Licences: High Density Areas Geographical boundaries of the ‘Spectrum Access High Density 26 GHz’ licences and the ‘Spectrum Access High Density 40 GHz’ licences”](#), published on 11 November 2024.

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**”). On 11 November 2024, following consultation (the [May 2024 Consultation](#)), Ofcom published a statement providing notice of our final draft of the Auction Regulations (the [November 2024 Notice](#)). As specified in that notice, Ofcom intends to make the Auction Regulations (substantially in the form of the final draft annexed to the November 2024 Notice), once we have certainty over the start date of the auction.

- 2.7 The two statutory instruments annexed to this Notice are intended to implement some of our policy decisions in relation to the **award licences**.³ Specifically:
- a) the order is intended to implement our policy decision to **grant a limited number of award licences**, with their precise number being determined through the procedure set out in the Auction Regulations; and
 - b) the regulations are intended to implement our policy decision to **make the award licences tradable**.

Notice of Ofcom’s decisions to make the proposed statutory instruments

The Wireless Telegraphy (Limitation of Number of Licences) Order [2025]

- 2.8 In the [April 2024 consultation](#), we published a draft of the proposed order, along with our impact assessments (Annexes A7-A8), and explained its general effect, inviting stakeholders’ views. We have not received any comments from stakeholders.
- 2.9 As explained in more detailed in Section 3, we have decided to make the proposed order substantially in the form of the draft annexed to this notice. Since the final version of the Wireless Telegraphy (Limitation of Number of Licences) Order [2025] will contain a reference to the Auction Regulations, **we currently plan to make the limitation order shortly after we have made the Auction Regulations**. A copy of the order (in draft form) is annexed to this notice for indicative purposes, in the form that we intend to submit for registration and publication after making the order. The order (once made) will be available on the www.legislation.gov.uk website, which is the only authorised source for published statutory instruments.

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2025]

- 2.10 In the [April 2024 consultation](#), we published also a draft of the proposed regulations, along with our impact assessments (Annexes A7-A8), and explained their general effect, inviting stakeholders’ views. We have not received any comments from stakeholders.
- 2.11 As explained in more detailed in Section 4, we have decided to make the proposed regulations substantially in the form of the draft annexed to this notice. **We currently plan**

³ Samples of the award licences are annexed to the Information Memorandum published on 11 November 2024, which is available at: <https://www.ofcom.org.uk/spectrum/frequencies/mmwave-spectrum-for-new-uses>

to make these regulations shortly after we have made the Auction Regulations. A copy of the regulations (in draft form) is annexed to this notice for indicative purposes, in the form that we intend to submit for registration and publication after making the regulations. The regulations (once made) will be available on the www.legislation.gov.uk, which is the only authorised source for published statutory instruments.

3. The order

The legislative framework

- 3.1 Under section 29(1) of the Wireless Telegraphy Act 2006 (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 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 an 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.
- 3.5 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.
- 3.6 The proposed order (which we set out in draft form in [Annex A5](#) to the [April 2024 consultation](#)) consequently provided that we would 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. The frequencies to which the proposed order related (i.e., those falling within the 25.1-27.5 GHz and 40.5-43.5 GHz bands) included all of the frequencies that we will make available in the award process.

Consultation responses and Ofcom’s decisions

- 3.7 We have not received any comments from stakeholders.

3.8 We have decided to make the proposed order substantially in the form of the draft annexed to this notice, which reflects the draft annexed to our April 2024 consultation, with a few editorial changes.

4. The 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**”).⁴
- 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.
- 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

⁴ S.I. [2187/2012](#), subsequently amended by S.I. [1338/2015](#) and S.I. [950/2019](#).

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.

The proposed regulations

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, in the [April 2024 consultation](#) we proposed 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 We set out a draft of the proposed regulations in [Annex A6](#) to the April 2024 consultation.

Consultation responses and Ofcom's decisions

- 4.12 We have not received any comments from stakeholders.
- 4.13 We have decided to make the proposed regulations substantially in the form of the draft annexed to this notice, which reflects the draft annexed to our April 2024 consultation, with a few editorial changes.

A1. Draft of the order

STATUTORY INSTRUMENTS

[2025] No. 0000

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Limitation of Number of Licences) Order [2025]

Made - - - - - ***

Coming into force ***

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 29(1) to (3) and section 122(7) of the Wireless Telegraphy Act 2006 ⁽⁵⁾ (the “Act”).

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

Citation, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order [2025] and comes into force on [xxxx].

(2) This Order does 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 frequencies in the following frequency bands—

- (a) 25.1 to 27.5 gigahertz; and
- (b) 40.5 to 43.5 gigahertz.

(2) In determining the number of licences to be granted for the use of 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 [2025]⁽⁶⁾.

Date _____
For and by the authority of the Office of Communications
Director of Spectrum Group
Name

⁽⁵⁾ 2006 c.36.
⁽⁶⁾ S.I. [2025]/xxx.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies 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 of this Order is available on OFCOM’s website at www.ofcom.org.uk. Hard copies of this assessment can be obtained free of charge by writing to OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA (tel. 020 7981 3000). Copies of this assessment have also been placed in the library of both Houses of Parliament.

A2. Draft of the regulations

STATUTORY INSTRUMENTS

[2025] No. 0000

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2025]

Made - - - - - ***

Coming into force ***

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

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

Citation and commencement

3. These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading) (Amendment) Regulations [2025] and come into force on [xxxx].

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

4.—(1) The Schedule to the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011⁽⁸⁾ is amended as follows.

(2) In Column 1, after “Spectrum Access” insert “Spectrum Access High Density”.

(3) At the end of Column 2, insert—

“25100–27500 MHz
40500–43500 MHz”.

Date _____ *Name*
Director of Spectrum Group
For and by the authority of the Office of Communications

⁽⁷⁾ 2006 c.36.

⁽⁸⁾ S.I. 2011/1507, amended by S.I. 2013/646, S.I. 2015/1339 and S.I. 2019/951.

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, S.I. 2015/1339 and S.I. 2019/951) to include an additional licence class (“Spectrum Access High Density”) and additional frequency bands (25100–27500 MHz and 40500–43500 MHz) in the Schedule.

A full regulatory impact assessment of the effect of these Regulations is available on OFCOM’s website at www.ofcom.org.uk. Hard copies of this assessment can be obtained free of charge by writing to OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA (tel. 020 7981 3000). Copies of this assessment have also been placed in the library of both Houses of Parliament.