

2009 No. 17

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Recognised Spectrum Access and
Licence) (Spectrum Trading) Regulations 2009**

Made - - - - *9th January 2009*

Coming into force - - *23rd January 2009*

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

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Recognised Spectrum Access and Licence) (Spectrum Trading) Regulations 2009 and shall come into force on 23rd January 2009.

(2) These regulations shall not extend to the Bailiwick of Guernsey.

Interpretation

2. In these Regulations—

“concurrent holders” means persons who concurrently hold the rights and obligations under a grant of RSA or a licence by virtue of a transfer authorised by these Regulations which has that effect;

“OFCOM” means Office of Communications;

“RSA” means recognised spectrum access;

“licence” means wireless telegraphy licence;

“apparatus” means wireless telegraphy apparatus; and

“station” means wireless telegraphy station.

Transfer of all of the rights and obligations arising by virtue of a grant of RSA or a licence

3.—(1) Subject to regulation 5, a transfer by the holder of a grant of RSA or a licence to which this paragraph applies of all of the rights and obligations arising by virtue of that grant of RSA or that licence is authorised if it satisfies one of the two conditions set out in paragraph (2).

(2) Those conditions are—

- (a) that the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer;
- (b) that the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer.

(3) Paragraph (1) shall apply to grants of RSA and licences of a class specified in Column 1 of each of Parts 1 and 2 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part.

Transfer of part of the rights and obligations arising by virtue of a grant of RSA or a licence

4. Subject to regulation 5, transfers satisfying one of the two conditions set out in regulation 3(2) are also authorised where the transfer is of—

- (a) all the rights arising by virtue of a grant of RSA or a licence which relate to—
 - (i) a part of the range of frequencies in which—
 - (aa) in the case of a licence, the holder is authorised to establish, install and use transmitting and receiving stations or apparatus under one of the licences of a class specified in Column 1 of Part 1 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part; and
 - (bb) in the case of RSA, the holder is recognised as using transmitting or receiving stations or apparatus under one of the grants of RSA of a class specified in Column 1 of Part 1 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same part;
 - (ii) a geographical area being part of the total geographical area in which—
 - (aa) in the case of a licence, the holder is so authorised; and
 - (bb) in the case of RSA, the holder is so recognised;
 - (iii) both of the situations set out in sub-paragraphs (i) and (ii);
 - (iv) part of the range of frequencies in which—
 - (aa) in the case of a licence, the holder is authorised to establish, install and use transmitting and receiving stations or apparatus under one of the licences of a class specified in Column 1 of Part 2 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part; and
 - (bb) in the case of RSA, the holder is recognised as using transmitting or receiving stations or apparatus under one of the grants of RSA of a class specified in Column 1 of Part 2 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part;
 - (v) a geographical area being a fifty kilometre square part of the total geographical area in which—
 - (aa) in the case of a licence, the holder is authorised to establish, install and use radio transmitting and receiving stations or apparatus under one of the licences of a class specified in Column 1 of Part 2 of the Schedule which

apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part; and

- (bb) in the case of RSA, the holder is recognised as using radio transmitting and receiving stations or apparatus under one of the grants of RSA of a class specified in Column 1 of Part 2 of the Schedule which apply to stations or apparatus operating within any of the frequency bands specified in Column 2 of the same Part; or

(vi) both of the situations set out in sub-paragraphs (iv) and (v); and

- (b) the corresponding part of each of the obligations under the grant of RSA or licence.

Circumstances in which a transfer is not authorised

5. A transfer of rights and obligations arising under a grant of RSA or a licence is not authorised where—

- (a) any holder of the grant of RSA or the licence, or all of the concurrent holders, and the transferee have not consented to the transfer;
- (b) any sum payable to OFCOM in respect of the grant of RSA or the licence has not been paid by the time it became due;
- (c) OFCOM has served notice on the holder, or the concurrent holders, of a proposal to revoke or vary the grant of RSA or the licence but that revocation or variation has not yet been made;
- (d) the holder of the grant of RSA or the licence has, or all of the concurrent holders have, requested OFCOM to revoke or vary the grant of RSA or the licence or have consented to a revocation or variation proposed by OFCOM but that revocation or variation has not yet been made; or
- (e) OFCOM have not given their consent, under regulation 6(3)(a), to the transfer being made.

Transfer procedure

6.—(1) The holder, or concurrent holders, of a grant of RSA or a licence, who wishes, or who wish, to make a transfer authorised by regulations 3(1) or 4 must provide to OFCOM—

- (a) the reference number of the grant of RSA or the licence under which rights and obligations are to be transferred;
- (b) the name and address of the holder or concurrent holders of the grant of RSA or the licence;
- (c) the name and address of the proposed transferee;
- (d) a description of which type of transfer authorised by regulation 3(1) or 4 is proposed;
- (e) a document signed by or on behalf of the holder, or each concurrent holder, of the grant of RSA or the licence and signed by or on behalf of the transferee, under which each of those persons warrants to OFCOM that he has consented to the proposed transfer;
- (f) all information necessary for OFCOM to determine whether or not they shall consent to the transfer;
- (g) in the case of a transfer authorised by regulation 4, a description of which rights and obligations under the grant of RSA or the licence are to be transferred; and
- (h) notice of whether the transfer will involve a conversion under which the rights and obligations that are acquired by the transferee shall take effect—
 - (i) if they are rights and obligations under a licence, as rights and obligations under a grant of RSA; and
 - (ii) if they are rights and obligations under a grant of RSA, as rights and obligations under a licence.

(2) OFCOM shall, after determining that the requirements of paragraph (1) have been met, publish a notice stating—

- (a) the name of the holder or concurrent holders of the grant of RSA or the licence and the name of the transferee to whom it is proposed that the rights and obligations arising under the grant of RSA or the licence shall be transferred;
- (b) the date when OFCOM determined that the requirements of paragraph (1) were met;
- (c) the reference number of the grant of RSA or the licence under which rights and obligations are to be transferred; and
- (d) in the case of a transfer authorised by regulation 4, a description of which rights under the grant of RSA or the licence are proposed to be transferred.

(3) After publishing a notice under paragraph (2) OFCOM shall decide—

- (a) if they consent to the transfer in accordance with regulation 8; and
- (b) if they shall give any directions under regulation 9.

(4) OFCOM shall notify the parties to the proposed transfer of their decisions under paragraph (3).

(5) OFCOM shall publish the information specified in paragraph (2) in relation to transfers that have been effected pursuant to regulation 7.

Putting the transfer into effect

7.—(1) Subject to paragraph (3), a transfer of the rights and obligations under a grant of RSA shall be effected by the holder or concurrent holders of the grant of RSA surrendering that grant to OFCOM and by OFCOM granting a new one to the transferee and—

- (a) in the case of a transfer which satisfies the condition set out in regulation 3(2)(b), the holder or concurrent holders who made the transfer; and
- (b) in the case of a transfer authorised by regulation 4, to the holder or concurrent holders who made the transfer.

(2) Subject to paragraph (3), a transfer of the rights and obligations under a licence shall be effected by the holder or concurrent holders of the licence surrendering that licence to OFCOM and by OFCOM granting a new one to the transferee and—

- (a) in the case of a transfer which satisfies the condition set out in regulation 3(2)(b), the holder or concurrent holders who made the transfer; and
- (b) in the case of a transfer authorised by regulation 4, to the holder or concurrent holders who made the transfer.

(3) Where a notice has been given to OFCOM under regulation 6(1)(h) that the transfer will involve a conversion, a transfer of the rights and obligations under a grant of RSA or a licence shall be effected by—

- (a) the holder or concurrent holders of the grant of RSA or the licence surrendering that grant of RSA or that licence to OFCOM;
- (b) OFCOM granting—
 - (i) where the transfer is of rights and obligations under a licence, a new grant of RSA to the transferee;
 - (ii) where the transfer is of rights and obligations under a grant of RSA, a new licence to the transferee; and
- (c) OFCOM granting a new grant of RSA or a new licence—
 - (i) in the case of a transfer which satisfies the condition set out in regulation 3(2)(b), to the holder or concurrent holders who made the transfer;
 - (ii) in the case of a transfer authorised by regulation 4, to the holder or concurrent holders who made the transfer.

Consent by OFCOM

8. In determining whether or not to consent to a proposed transfer OFCOM shall take into account whether—

- (a) the holder is, or the concurrent holders are, in breach of the terms of the grant of RSA or the 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 grant of RSA or the licence which is to be granted as a result of the transfer;
- (c) in the case of a transfer authorised by regulation 4 the transferor is able to meet the terms, provisions and limitations of the grant of RSA or the 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 grant of RSA or a licence which rights and obligations are to be transferred may be granted; and
- (e) 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 Communications Act 2003 or section 5 of the Wireless Telegraphy Act 2006.

Directions by OFCOM

9.—(1) If OFCOM consent to a transfer they may also direct that a transfer shall only be put into effect in accordance with regulation 7 after compliance with conditions which may relate to any matter mentioned in any of the paragraphs of regulation 8.

(2) A transfer may not be put into effect in accordance with regulation 7 until after compliance with the conditions set out in any such direction.

Ed Richards

Chief Executive of the Office of Communications
For and by the authority of the Office of Communications

9th January 2009

SCHEDULE

Regulations 3 and 4

PART 1

Column 1	Column 2
Class of Licence or RSA	Frequency Bands
Radio Astronomy	42.5–43.5 Gigahertz
Converted Spectrum Access	150.05–152 Megahertz
	1660.5–1668 Megahertz
	1668–1670 Megahertz

PART 2

Column 1	Column 2
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Class of Licence or RSA	Frequency Bands
Crown Recognised Spectrum Access	406.1–410 Megahertz
Converted Spectrum Access	410–412 Megahertz
	414–420 Megahertz
	420–422 Megahertz
	424–425 Megahertz
	429–430 Megahertz

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 30(1) to (3) of the Wireless Telegraphy Act 2006.

Regulation 3(1) (subject to the exception in regulation 5) authorises the transfer of all rights and obligations arising by virtue of the grants of recognised spectrum access or wireless telegraphy licences of the classes listed in Column 1 of the Schedule which apply to wireless telegraphy stations or a wireless telegraphy apparatus operating within any of the frequency bands specified in Column 2 of the Schedule.

Regulation 4 (subject to the exception in regulation 5) authorises the transfer of part of the rights and obligations arising by virtue of certain grants of recognised spectrum access and certain wireless telegraphy licences.

Two types of transfer are authorised by regulation 3(1) and 4. Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer. Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer.

Regulation 5 specifies circumstances in which transfers are not authorised which include where OFCOM have not given their consent.

Regulation 6 sets out the procedure for making transfers including the requirement to provide to OFCOM notice of whether the transfer will involve a conversion under which the rights and obligations acquired by the transferee shall take effect, if they are rights and obligation under a licence, as rights and obligations under a grant of RSA and, conversely, if they are rights and obligations under a grant of RSA, as rights and obligations under a licence.

Regulation 7 sets out how transfers will be effected. Regulation 8 sets out the matters which OFCOM shall take into account in determining whether or not to consent. If OFCOM consent to a transfer they may also direct that a transfer shall only be put into effect after compliance with conditions.

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 Library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the OFCOM website at www.ofcom.org.uk. Copies of the report have also been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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