

Annex A: EE's response to the Consultation

EE's comments in relation to Ofcom's published draft of The Wireless Telegraphy (Licence Award) Regulations 2015 (the "Draft Regulations"), as set out in Annex 5 of the Consultation, are provided for Ofcom's consideration in the table below.

Table 1 – EE's comments in relation to the Draft Regulations

Regulation	EE's comments
2(1)	When defining licences (e.g. "2.3 GHz licence") EE suggests replacing the word "at" by "using".
2(1) "pre-existing licence holder"	This regulation does not appear to provide for the scenario whereby one of the pre-existing licence holders trades its licence before the auction.
4(4)	EE suggests replacing "whereby" by "where".
4(6)	EE questions how Ofcom will ensure that a pre-existing licence holder complies with the rules of the auction, including the Activity Rules in PART 5 of the Regulations, if it does not require them to pay an initial deposit?
6(1)	EE suggests relabeling the sub-paragraphs starting with (a).
14(2)	EE suggests deletion of the word "who".
15(2)(a)	EE suggests inserting the words "in pounds" after the words "such deposit". (otherwise why isn't a bidder's eligibility limit the amount that they have on deposit with Ofcom in pence divided by one million?)
15(2)(b)(ii)	EE suggests inserting the words "in pounds" after the words "such deposit".
15(4) and 15(5)	As currently drafted these regulations could be interpreted as meaning that in the case where one of the pre-existing licence holders has applied for a replacement licence and has indicated that it will participate in the assignment stage only, regulation 15(4) is completely dis-applied (in respect of all bidders), whereas EE suspects that the intention is that regulation 15(4) should only be dis-applied in respect of the pre-existing licence holder.
17	EE suggests changing the title to "Participation of a pre-existing licence holder".
17(10)	EE suspects that "33" should be replaced by "34" (cf regulation 17(12)).
19(2)(c), (d) and (e)	EE suggests that Ofcom deletes "or not" (in three cases), unless Ofcom intends to require bidders to expressly indicate e.g. that they do not wish to use a waiver?



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21(4)(c)	EE suggests appending the words “on behalf of a bidder”.
21(5)	EE is unclear how the outcome of the auction will be determined if Ofcom invokes this regulation?
26(1)	EE suggests append “or prior rounds” to this regulation, otherwise we consider the regulation to be inconsistent with e.g. 27(1)(a)).
27(1)(b)(ii)	It is unclear to EE, from the regulation, which principal stage bids have to have been assigned standing high bid status for this condition to be satisfied. It is EE’s understanding that Ofcom’s intention is that this refers to all principal stage bids made by the relevant bidder for the relevant lot type in the same round as the round in which the bids that have been assigned standing high bid status were made, but EE considers this to be unclear in the current drafting.
27(1)(c)(ii)	Please see EE’s comment on 27(1)(b)(ii) which also applies here.
28(1)	EE suggests prepending the words “For each lot type separately” to this regulation.
28(2)(a)	EE considers that this regulation potentially does not correctly implement Ofcom’s intended policy in the circumstances where a bidder was the standing high bidder on a number of lots in a category at the same round price as the most recent round, withdrew those standing high bids, and then re-bid on a smaller number of those same lots. EE suspects that the regulation should refer to the valid principal stage bids made by the bidder in the most recent round in which the bidder made a valid principal stage bid at the round price of the most recent round, rather than the round in which the bidder made the highest number of such bids. EE notes that if this is not addressed a bidder could, in these circumstances, be assigned standing high bids in excess of their eligibility limit.
28(3)	EE considers that Regulations 28(3)(a) and 28(3)(b) cannot both be simultaneously satisfied (they appear to be contradictory). EE suggests re-drafting as follows [underlined]: (3) Ofcom shall then create an overall list of valid principal stage bids which ranks all of the identified bids (the “overall identified bid list”) such that— (a) all of the bids made by a bidder which is placed higher in the overall bidder ranking list are ranked ahead of those of a bidder which is ranked lower on that list; and (b) subject to (a) , all bids made by a bidder are ranked in random order on that list.
29(1)	EE suggests prepending the words “For each lot type separately” to this regulation?



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29(2)	EE suggests prepending the words "For each lot type separately" to this regulation?
30(1)(a) and (b)	EE suggests replacing "in" by "after" (in two instances) (cf 26(1)).
38(1)	It is unclear to EE, which principal stage round this regulation is referring to. Regulation 38(1) could also be read as requiring each bidder to meet the deposit requirement defined in regulation 53(2) at all times throughout the auction, whereas regulation 53(3) allows each bidder one working day in which to 'top up' their deposit to meet the notified deposit requirement. EE suggests that Ofcom redrafts regulation 38(1) to clarify that a bidder is only prohibited from making further principal stage bids if the bidder has failed to 'top up' its deposit in accordance with regulation 53(3).
39(1)	EE suggests inserting the words "up to that point in time" after the words "made by the bidder" in the regulation (otherwise the regulation could be read as meaning that all subsequent principal stage bids made by the bidder for lots of the relevant type will not be eligible to be assigned standing high bidder status in subsequent rounds).
39(2)(b)	EE suggests replacing "and" by "or".
40(1)	EE suggests deleting the words "except after the final principal stage round" (otherwise inconsistent with the use of this regulation in regulation 43(2)).
41(3)(b)	EE considers the current drafting to be unclear, and potentially inconsistent with Ofcom's stated policy. EE suggests deleting and replacing with "after that round and after every subsequent round the total number of standing high bids for 2.3 GHz frequency lots is less than four".
42(3)(b)	EE considers the current drafting to be unclear, and potentially inconsistent with Ofcom's stated policy. EE suggests deleting and replacing with "after that round and after every subsequent round the total number of standing high bids for 3.4 GHz frequency lots is less than thirty".
44(2)(g)	EE suggests inserting "bidder's" before "interim" and append "in respect of each type of lot" in the regulation.
45(2)(d)	EE suggests prepending "for each lot type".
45(6)(b)	EE suggests replacing "2.3" by "3.4".
49(2)	EE notes that this regulation refers to regulation 44(a) – EE suggests that it should instead refer to regulation 44(2)(a)
54(1)	EE considers it to be unclear which bidder this regulation intended to refer to.



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54	EE note that there does not appear to be any provision in the regulations for Ofcom to repay the deposits of losing bidders!
80(b)	EE notes that this regulation refers to regulation 70 – EE suggests that it should instead be regulation 72.
Schedule 1(h)	EE suspects that the reference to lots 35 to 38 should in fact be a reference to lots 19 to 34.
Schedule 6, Paragraph 5 (4)	EE suggests that the following amendment should be made [underlined] to this paragraph: <p>“The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of assignment stage bids for numbered 2.3 GHz frequency lots or one of the valid combinations of assignment stage bids for numbered 2.3 GHz frequency lots (as the case may be) having the highest total value of amounts bid where, for each assignment stage bid for numbered 2.3 GHz frequency lots made by the winning bidder that submitted the winning assignment stage bid for which p_A is the price, the amount of that assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.”</p>
Schedule 7, Paragraph 5 (3) (b)	EE notes that Paragraph 5 (3) (b) states “... for numbered 2.3 GHz frequency lots”. Given that Schedule 7 relates to the determination of the 3.4 GHz Additional price, EE believes that this text should refer to 3.4 GHz rather than 2.3 GHz.
Schedule 7, Paragraph 5 (4)	EE suggests that the following amendment should be made [underlined] to this paragraph: <p>“The amount calculated in accordance with this sub paragraph is the total amount of the valid combination of assignment stage bids for numbered 3.4 GHz frequency lots or one of the valid combinations of assignment stage bids for numbered 3.4 GHz frequency lots (as the case may be) having the highest total value of amounts bid where, for each assignment stage bid for numbered 3.4 GHz frequency lots made by the winning bidder that submitted the winning assignment stage bid for which p_A is the price, the amount of that assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.”</p>



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