



Notice of Ofcom's proposal to
make regulations in connection with
the award of 2.3 GHz and 3.4 GHz
spectrum

Consultation

Publication date: 26 October 2015
Closing date for responses: 27 November 2015

About this document

This document sets out proposed Regulations for the award by auction of radio spectrum licences in the 2.3 and 3.4 GHz bands. The proposed Regulations give effect to the policy decisions set out in a statement published on 26 May 2015 and a statement published alongside this notice.

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Section 1

Notice of proposals

- 1.1 This Notice is given in accordance with section 122(4) and (5) of the Wireless Telegraphy Act 2006 ("the 2006" Act) and covers a proposal to make a statutory instrument.
- 1.2 The reasoning for Ofcom's decision to award wireless telegraphy licences is set out in two statements, "Public Sector Spectrum Release: Award of the 2.3 and 3.4 GHz spectrum bands", published on 26 May 2015¹ and "Public Sector Spectrum Release (PSSR) - Competition and Auction Design Issues for the 2.3 and 3.4 GHz spectrum award including reserve prices", published on the date of this Notice².

Proposed licence award regulations

- 1.3 Ofcom has the statutory power under sections 14 and 122(7) of the 2006 Act to make regulation to award licences by means of an auction.
- 1.4 Ofcom proposes to make regulations to allow for an auction of rights of use of radio frequencies (in wireless telegraphy licences) to be held.
- 1.5 A draft of the proposed regulations is set out at annex 5 and their general effect is set out at section 2 of this document.

Comments or representations

- 1.6 Comments or representations with regard to the proposed regulations are invited by **27 November 2015**. Comments should be sent to:

pssr.award@ofcom.org.uk

or by post to:

Robert Emson
Spectrum Group
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Telephone inquiries to: 020 7783 4375

- 1.7 Following completion of this consultation process, Ofcom intends to make the final regulations as soon as practicable.
- 1.8 Hard copies of this notice and the proposed regulations can be obtained from Robert Emson at the address or telephone number above or by email to robert.emson@ofcom.org.uk

¹ <http://stakeholders.ofcom.org.uk/consultations/2.3-3.4-ghz-auction-design/statement-further-consultation/>

² <http://stakeholders.ofcom.org.uk/consultations/2.3-3.4-ghz-auction-design/statement/>

- 1.9 Electronic copies are available and this notice has been placed on Ofcom's website at www.ofcom.org.uk.

Section 2

General effect of the proposed Wireless Telegraphy (Licence Award) Regulations 2015

The legislative framework

- 2.1 Under section 14(1), (2), (3), (4), (6) and (7) of the 2006 Act Ofcom may make regulations to allow wireless telegraphy licences to be awarded by means of an auction (when doing so, section 122(7) of the 2006 Act enables Ofcom to make different provision for different cases and to make incidental provision).
- 2.2 Ofcom is giving notice of its proposal to make auction regulations in relation to the award of frequencies in the 2.3 GHz and 3.4 GHz band.
- 2.3 A draft of the regulations is set out at annex 5.

The proposed regulations

- 2.4 The proposed regulations set out the procedure and rules that will apply for the award of wireless telegraphy licences to operate within specified frequencies.
- 2.5 The proposed process involves several stages. These are:
 - 2.5.1 the application stage, in which applicants can apply to Ofcom to take part in the award process (regulations 3-5);
 - 2.5.2 the qualification stage, in which Ofcom decides which applicants are qualified to participate in the award process (regulations 6-13);
 - 2.5.3 the principal stage, in which bidding takes place and in which it is determined which bidders have won rights to use frequencies and for how many "lots" (but not the specific frequencies to be assigned to each bidder) (regulations 18-54);
 - 2.5.4 the assignment stage, in which specific frequencies are assigned to winning bidders, which correspond to the quantity of lots which they won in the principal stage (regulations 55-78); and
 - 2.5.5 the grant stage, where the licence fee payable by a winning bidder is determined by Ofcom in accordance with the regulations and in which that fee is paid and licences granted (regulations 79-85).
- 2.6 The proposed regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process (regulations 86-88).
- 2.7 The proposed regulations have been drafted in a way that reflects the chronology of the award process in these different stages.

Extent of application of the regulations

- 2.8 The proposed regulations will apply in the United Kingdom but will not extend to the Channel Islands or to the Isle of Man.

Entry into force of the regulations

- 2.9 The proposed regulations will come into force on a particular day which will be specified in the regulations when they are made. This date has yet to be determined and will depend on a number of factors, including responses to this Notice.

The radio frequencies which are available for award

- 2.10 The frequencies which are available in the award process are set out in Schedule 1 to the proposed regulations. This Schedule is entitled "Frequency Lots".
- 2.11 Bids made during the award process will be for a wireless telegraphy licence (granted under section 8 of the 2006 Act) which authorises the use of 2.3 GHz frequency lots, or for a wireless telegraphy licence which authorises the use of 3.4 GHz frequency lots.
- 2.12 The different types of lots which are available in the award process are:
- 2.12.1 2.3 GHz frequency lot;
 - 2.12.2 3.4 GHz frequency lot.
- 2.13 As described in Schedule 1 of the regulations, the 2.3 GHz frequencies available in the auction are comprised of four 10 MHz lots within the frequency range 2350 MHz to 2390 MHz.
- 2.14 In the 3.4 GHz band, bidders will be able to bid for thirty 5 MHz lots in the principal stage. In the assignment stage, if UK Broadband Limited and UKB Networks Limited applies for a replacement licence (as further explained below), bidders will be able to bid for all frequencies within the frequency range 3410-3600 MHz, including those currently licenced to UK Broadband Limited or UKB Networks Limited. If UK Broadband Limited or UKB Networks Limited does not apply for a replacement licence or does not qualify to participate in the award, bidders will be able to bid for frequencies in the range 3410 – 3480 MHz and 3500 – 3580 MHz.

Application Stage

- 2.15 The Application Stage is described in detail at Part 2 of the proposed regulations.
- 2.16 The application requirements include the submission of:
- 2.16.1 an application form which is set out in Schedule 2 to the regulations, and which includes warranties on the part of the applicant. It must be signed by two authorised persons;
 - 2.16.2 a document for each person who is not an associate of the applicant group, but whom the applicant wishes to join its applicant group, signed by that person and two authorised persons on behalf of the applicant;

- 2.16.3 a document setting out whether the applicant requires a minimum number of 3.4 GHz lots and the number of such minimum requirement (none, two, three or four); and
- 2.16.4 an initial deposit of £100,000.
- 2.17 The document mentioned at paragraph 2.16.2 is intended to cover advisers and other persons to whom the applicant will reveal confidential information in connection with the award process. Revealing confidential information would breach the activity rules, if it were to a person who was not included within a bidder group, and could lead to exclusion from the award process.
- 2.18 The concepts of “applicant group” and “bidder group” in the proposed regulations are to ensure that the persons within company groups, and their advisers, keep information confidential. Bidder groups should not have overlapping members, and there is to be a separation of bidders during the award process, to ensure the integrity of the award process.
- 2.19 Applicant groups include associates, and “associate” is defined as a person with a material interest in the applicant. Material interest is also defined and that definition refers to particular sections in the Companies Act 2006. Members of an applicant’s group also include persons in relation to which the applicant has submitted the document mentioned at paragraph 2.16.2.
- 2.20 By specifying a minimum spectrum requirement in the 3.4 GHz band, the bidder guarantees it will not be awarded less spectrum than the specified requirement. During the principal stage, a bidder who specifies a minimum spectrum requirement will not be allowed to submit bids for less 3.4 GHz lots than the number of lots specified in its minimum spectrum requirement (but may choose not to bid in the 3.4 GHz band at all).
- 2.21 In exceptional circumstances, Ofcom may be required to change the day, time or place for delivery of application forms or the payment of the initial deposit. Ofcom will take reasonable steps to inform interested parties of a change.
- 2.22 The Application Stage also explains that one of UK Broadband Limited or UKB Networks Limited, who are the concurrent licence holders for a licence which authorises the use of the 3480-3500 and 3580-3600 MHz bands, may apply for a replacement licence. The replacement licence would be for a contiguous block of 40 MHz in the 3410-3600 band, with the exact frequencies to be determined by bidding in the assignment stage (as further explained below). If UK Broadband Limited or UKB Networks Limited wishes to apply for such replacement licence, both licence holders are required to commit to the surrender of their pre-existing licence.

Qualification Stage

- 2.23 The qualification stage is described in detail at Part 3 of the proposed regulations.
- 2.24 Following the date for receipt of applications, Ofcom will notify each applicant of the names and associates of each other applicant.
- 2.25 This notification will also set a deadline by when applicants must notify Ofcom whether or not any members of their applicant group are also associates of another applicant. In such cases, applicants must also notify the other applicant(s) concerned.

- 2.26 In parallel with this exercise, Ofcom will also consider whether any members of one applicant group are also members of another applicant group.
- 2.27 Where Ofcom has determined that a common membership exists, Ofcom will notify the applicants concerned and specify a deadline by when all the common memberships must be resolved (for example, the time by when a common associate must have disposed of or otherwise removed its "material interest" in one or both of the applicants concerned, or by when one of the applicants concerned must have withdrawn from the award process).
- 2.28 Ofcom will then record the details of the applicant group members. Where there has been a change in the composition of an applicant group, the applicant must provide new versions of the documents already submitted, following that change. The applicant groups so recorded constitute a "bidder group" for the subsequent stages of the award process.
- 2.29 Ofcom then considers whether each applicant is qualified to participate in the award process.
- 2.30 Each applicant considered fit to hold a licence (in accordance with the provisions of regulation 9) and not having an overlap in its applicant group with another applicant, will qualify to participate in the award process.
- During the qualification stage, Ofcom may request an applicant to provide additional information or documentation by a specified deadline. In making its determination of whether an applicant is fit to hold a licence, Ofcom will take into account any failure by the applicant to provide the additional information by the relevant deadline.
 - In addition, in making its determination of whether an applicant is fit to hold a licence, Ofcom will take into account a number of factors, including, for example, any action that is likely to distort the outcome of the award process.
- 2.31 Ofcom will notify each applicant whether it has qualified to bid in the award process, including the reasons an applicant has not qualified.
- 2.32 Following qualification there will follow a period within which applicants' may withdraw from the award process if they wish to do so. If they do withdraw, their initial deposit will be refunded unless the initial deposit has been forfeited in accordance with the regulations (for example for breach of the activity rules).
- 2.33 Ofcom will return initial deposits to applicants who do not qualify to bid in the award process or who withdraw from the award process at the end of the qualification stage, unless the initial deposit has been forfeited in accordance with the regulations (for example for breach of the activity rules). No interest, if any, will be returned to applicants.
- 2.34 After the last day for withdrawal, Ofcom will determine and publish the number and names of bidders. Ofcom will also announce whether UK Broadband Limited or UKB Networks Limited applied for a replacement licence.

Eligibility and deposit before the first round of the principal stage

- 2.35 Before the principal stage commences, bidders can pay an additional deposit (regulation 14) which will be taken into account by Ofcom in accordance with

regulation 15 for calculating the bidder's eligibility limit for the first principal stage round.

- 2.36 The concept of an "eligibility limit" is used in the proposed regulations to determine how many lots a bidder may bid for. During the principal stage rounds, the eligibility points used by a bidder must not exceed the bidder's eligibility limit.
- 2.37 In order to determine eligibility limits for each bidder for the first principal stage round, Ofcom calculates the maximum number of lots each bidder could bid for in the first principal stage round, given the round price for each 2.3 GHz frequency lot and each 3.4 GHz frequency lot in the first principal stage round.
- 2.38 If the number which results is less than one, that bidder is excluded from the award process, and any sums provided to Ofcom as deposit will be forfeited.

Participation by UK Broadband Ltd or UKB Networks Ltd

- 2.39 Regulation 17 explains what happens if UK Broadband Ltd or UKB Networks Ltd applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded. In such case, while only thirty 3.4 GHz frequency lots are available in the principal stage, the assignment stage will include thirty-eight 3.4 GHz frequency lots, and the assignment stage options presented to bidders will include the frequencies currently included in the licence held by UK Broadband Ltd and UKB Networks Ltd.
- 2.40 If UK Broadband Ltd or UKB Networks Ltd applies for a replacement licence, that applicant may choose to participate in just the assignment stage or both the principal stage and the assignment stage. If it participates only in the assignment stage, its 3.4 GHz assignment stage options will be for eight lots (to replace its current licence). If it also participates in the principal stage, it can acquire additional frequencies, which will be included in the 3.4 GHz assignment stage options it will bid for.

The principal stage

- 2.41 The principal stage is described in detail at chapters 2 to 6 of part 4 of the proposed regulations.
- 2.42 The principal stage consists of one or more principal stage rounds.
- 2.43 During a principal stage round, a bidder may submit a principal stage form provided by Ofcom. On the principal stage form, the bidder must indicate the number of bids for 2.3 GHz lots it wishes to make, the number of bids for 3.4 GHz lots it wishes to make, whether it wishes to withdraw standing high bids for lots of either type, and whether it wishes to submit a waiver.
- 2.44 A principal stage bid is a bid for a single 2.3 GHz frequency lot or a single 3.4 GHz frequency lot.
- 2.45 In the first principal stage round, a bidder which does not submit at least one bid for a 2.3 GHz lot or a 3.4 GHz lot is excluded from the auction. A bidder cannot withdraw standing high bids (there are no standing high bids at that stage) or use a waiver in the first principal stage round.
- 2.46 For the first principal stage round the prices for each of the two types of lot are set out in regulation 22.

- 2.47 For subsequent principal stage rounds the prices for each lot category are set by Ofcom before the round begins. The price for a type of lot increases in each round if the number of standing high bids for lots of that type at the round price of the most recent round is equal to the total number of lots available for that type. The method for determination of prices by Ofcom is set out in regulation 23.
- 2.48 The principal stage rounds continue one after another until there is a round where no bidder does any of the following:
- 2.48.1 submit bids or
 - 2.48.2 withdraw standing high bids or
 - 2.48.3 use a waiver or Ofcom maintains the bidder's eligibility by using a default waiver.

Standing high bids

- 2.49 Following the end of each principal stage round, the auctioneer determines standing high bids for each lot.
- 2.50 Standing high bids are determined for each lot category independently. The process for determining standing high bids is specified in regulations 26 to 29.
- 2.51 Standing high bids determined after the last round of the principal stage will become winning bids.

Eligibility limit for the subsequent principal stage rounds

- 2.52 Before the second principal stage round and before each subsequent principal stage round Ofcom determines the eligibility limit for each bidder for that round, as specified in regulation 34. The eligibility limit is equivalent to the eligibility points used by the bidder in the preceding round unless a bidder uses a waiver or Ofcom maintains the bidder's eligibility by using a default waiver, as explained below.
- 2.53 The eligibility points used by a bidder in a given round is calculated by reference to the bidder's bids made for a type of lot, or, where the bidder does not make bids for that type of lots, his standing high bids for that type of lot (unless withdrawn). Therefore, a bidder's standing high bids for a type of lot will constrain the number of bids made by that bidder.
- 2.54 A bid for a 2.3 GHz lot (or a standing high bid for a 2.3 GHz lot) attracts 4 eligibility points, whereas a bid for a 3.4 GHz lot (or a standing high bid for a 3.4 GHz lot) attracts 1 eligibility point.
- 2.55 Over successive primary bid rounds a bidder's eligibility limit can stay the same or can fall, but can never increase.
- 2.56 In principal stage rounds where the sum of the eligibility points assigned to all lots for which the bidder held a standing high bid at the beginning of the round is less than the bidder's eligibility limit in that round, the bidder may use a waiver. The effect of the waiver is to maintain the eligibility limit in the following round.
- 2.57 The bidder may submit a waiver using the principal stage form as specified in regulation 35. Alternatively, Ofcom will maintain the bidder's eligibility in the

circumstances described in the previous paragraph, and when the bidder does not submit a principal stage form, as specified in regulation 36.

- 2.58 A waiver may be used by a bidder, or by Ofcom to maintain that bidder's eligibility, up to three times during the principal stage. A waiver may not be used it in the first round or in any round where the bidder submits new bids or withdraws any standing high bids.

Withdrawing standing high bids

- 2.59 As set out above, a bidder can indicate on its principal stage form that it wishes to withdraw standing high bids, under certain circumstances. By withdrawing standing high bids, the bidder frees up eligibility points, which it can use for bids on lots of the other type. However, if Ofcom was unable to assign standing high bids to lots of the type withdrawn by the bidder, that bidder may be liable to pay for those lots. The circumstances under which such liability arises are set out in regulations 40 to 43. A bidder will not be assigned the lots in relation to which it is liable to pay under those regulations.

Deposits during the principal stage

- 2.60 Bidders will need to provide an amount by way of deposit during principal stage rounds to cover a proportion of their financial exposure following the last round of each day. They will need to provide Ofcom with that deposit by the end of the following working day. A bidder which does not have enough money on deposit, will not be allowed to submit a principal stage form.
- 2.61 The financial exposure following a round corresponds to the sum of the following:
- 2.61.1 The number of bids for 2.3 GHz lots which Ofcom has assigned standing high bid status, multiplied by the round price at which the bids were made (provided those bids were not withdrawn);
 - 2.61.2 The number of bids for 3.4 GHz lots which Ofcom has assigned standing high bid status, multiplied by the round price at which the bids were made (provided those bids were not withdrawn); and
 - 2.61.3 any (provisional) liability as a consequence of withdrawing standing high bids.
- 2.62 The proportion of the financial exposure which will need to be covered by way of deposit will be announced by Ofcom in advance of the principal stage of the auction, and may be changed during the principal stage.
- 2.63 The reason for this rule is that Ofcom should ensure that bidders have funds available to pay for the licences for which they are bidding and for payments related to withdrawals, to minimise non payment risk and consequential effects and risks for other bidders who take part in the award. The rule is described in regulation 53.
- 2.64 A final principal stage deposit is required once the winning principal stage bids have been determined. The final principal stage deposit corresponds to the sum of the following:
- 2.64.1 the base price for the winning bids for 2.3 GHz lots;

- 2.64.2 the base price for the winning bids for 3.4 GHz lots; and
 - 2.64.3 sums payable in respect of withdrawal of standing high bids.
- 2.65 In accordance with regulation 54, where the bidder does not provide Ofcom with the final principal stage deposit by 5pm on the working day following the notification of the results of the principal stage to the bidders, it will not be allowed to submit an assignment stage bid form. In these circumstances, the bidder shall be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options.

Process

- 2.66 Bidders are required to use the electronic auction system to submit their principal stage form. The deadline for submission of the form is set by Ofcom before the start of each round.
- 2.67 If Ofcom proceeds to make the proposed regulations it will publish detailed information on how to access and use the electronic auction system before the award process begins.

The assignment stage

- 2.68 Chapters 7, 8, 9 and 10 of Part 4 of the proposed regulations sets out how radio frequencies are to be assigned to winning bidders (the "assignment stage").
- 2.69 During the assignment stage round, bidders will bid for "2.3 GHz assignment stage options" and "3.4 GHz assignment stage options" in order to determine which particular frequencies should be assigned to which successful bidder.
- 2.70 These assignment stage options must be consistent with the assignment stage plans considered by Ofcom.
- 2.71 For the 2.3 GHz band, Ofcom will only consider those assignment stage plans where each bidder is assigned a contiguous frequency block that corresponds to the bandwidth acquired in the principal stage, and where any lots not assigned to any bidder also form a contiguous frequency block.
- 2.72 For the 3.4 GHz band, the assignment stage plans considered by Ofcom depend on whether UK Broadband Ltd or UKB Networks Ltd applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded.
- 2.72.1 in the event that UK Broadband Ltd or UKB Networks Ltd applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded, Ofcom will also consider only those assignment stage plans where each bidder is assigned a contiguous frequency block and where any lots not assigned to any bidder also form a contiguous frequency block.
 - 2.72.2 In the event that UK Broadband Ltd or UKB Networks Ltd does not apply for a replacement licence, does not qualify to participate in the auction, or is otherwise excluded, Ofcom will prioritise assignment stage plans in which all bidders are assigned contiguous assignments. If however there are no such assignments, Ofcom will prioritise assignment stage plans in which each bidder who receives non-contiguous frequencies obtains their

frequencies in two contiguous blocks of at least 20 MHz each. If there are no such assignments, then Ofcom will only consider those assignment stage plans in which the number of winners receiving non-contiguous frequencies is minimised.

Further deposits

- 2.73 Bids placed in the assignment stage by a bidder will only be considered valid if subsequently the bidder provides Ofcom with a deposit that covers all of the following:
- 2.73.1 the base price for the winning bids for 2.3 GHz lots;
 - 2.73.2 the base price for the winning bids for 3.4 GHz lots;
 - 2.73.3 sums payable in respect of withdrawal of standing high bids;
 - 2.73.4 the bidder's highest assignment stage bid for a 2.3 GHz assignment stage option; and
 - 2.73.5 the bidder's highest assignment stage bid for a 3.4 GHz assignment stage option.
- 2.74 Where the bidder fails to do so, it shall be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options.

Determination of winning assignment stage bids and additional prices

- 2.75 Of all combinations of assignment stage options that are compatible with valid assignment stage plans, the one that yields the greatest value will be selected as the winning combination of assignment stage options.
- 2.76 Bidders will pay the opportunity cost of their bids, as set out in regulations 64 and 72.

Grant stage

- 2.77 The licence fee payable by a winning bidder will be, for each of the 2.3 GHz licence and the 3.4 GHz licence, an amount equal to the total of the bidder's base price for the lots of a type, and the additional price for that winning assignment stage bid. While not part of the licence fee, each winning bidder is also required to pay the withdrawal liability.
- 2.78 Each winning bidder that has on deposit with Ofcom an amount less than its licence fees and the withdrawal liability will be required to increase its deposit (less any sum forfeited) to the level of its licence fees.
- 2.79 If that bidder meets the payment requirements, Ofcom will grant licences for the relevant frequencies which have been assigned. If not, the bidder will not be entitled to the grant of licences and will not receive a refund of its deposit, which will (where not already forfeited) be forfeited.
- 2.80 If a winning bidder's deposit (less any sum forfeited) is equal to or greater than its licence fees, Ofcom will grant the bidder licences for the relevant frequencies assigned and refund to the bidder the difference (if any) between the amount of that deposit (less any sum forfeited) and the licence fees.

2.81 Interest, if any, will not be paid to applicants or bidders.

Completion of the award process

2.82 After the grant of licences, and the payment of refunds to winning bidders, Ofcom will complete the award process by publishing on the Ofcom website the names of all the licensees, the details of the frequency ranges comprised in the licences awarded, the licence fees, details of the bids, decisions to withdraw, decisions to use a waiver, and default waivers used by Ofcom, and, where a bidder did not meet the requirements relating to the payment of licence fees and the withdrawal liability, details of the licences which would have been awarded, and fees which would have been paid.

Activity rules

2.83 The proposed regulations contain activity rules that have featured in previous Ofcom spectrum awards. These are intended primarily to ensure that bidder activities do not distort the award process. A list of events is set out in regulation 88, and the occurrence of such events can lead to forfeiture of deposits and exclusion from the award process. Bids made by excluded bidders are deemed to be invalid.

Consultation Question: Do you have any comments on the proposed statutory instrument set out in this notice?

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 November 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at spectrum <http://stakeholders.ofcom.org.uk/consultations/notice-2.3-3.4-ghz-spectrum/> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email pssr.award@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Robert Emson
Spectrum Group
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
- email: robert.emson@ofcom.org.uk
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Robert Emson on 020 7783 4375.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement.
- A1.12 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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 | <input type="checkbox"/> | Name/contact details/job title | <input type="checkbox"/> |
| Whole response | <input type="checkbox"/> | Organisation | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? | |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Consultation Question: Do you have any comments on the proposed statutory instrument set out in this notice?

Annex 5

Draft Wireless Telegraphy (Licence Award) Regulations 2015

2008 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Award) Regulations 2015

Made - - - - ***

Coming into force - - ***

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 14(1), (2), (3), (4), (6) and (7) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the 2006 Act”), makes the following Regulations.

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the 2006 Act, published notice of their proposal in accordance with section 122(4)(b) of the 2006 Act and have considered the representations made to them before the time specified in that notice in accordance with section 122(4)(c) of the 2006 Act.

PART 1

Introductory

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2015 and shall come into force on ***.

(2) These Regulations shall not extend to the Channel Islands or the Isle of Man.

Interpretation

2.—(1) In these Regulations—

“2.3 GHz additional price” has the meaning given in regulation 64;

“2.3 GHz assignment stage bid” shall be construed in accordance with regulation 60;

“2.3 GHz assignment stage option” has the meaning given in regulation 60;

“2.3 GHz assignment stage option list” has the meaning given in regulation 60;

“2.3 GHz licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at one or more of the 2.3 GHz frequency lots to be determined in accordance with the procedure set out in Part 4 of these Regulations;

“3.4 GHz additional price” has the meaning given in regulation 72;

(a) 2006 c.36.

“3.4 GHz assignment stage bid” shall be construed in accordance with regulation 65;

“3.4 GHz assignment stage option” has the meaning given in regulation 65;

“3.4 GHz assignment stage option list” has the meaning given in regulation 65;

“3.4 GHz licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at one or more of the 3.4 GHz frequency lots to be determined in accordance with the procedure set out in Part 4 of these Regulations;

“3.4 GHz minimum requirement” has the meaning given in regulation 4;

“additional 3.4 GHz frequency lot” has the meaning given in regulation 17;

“additional price” means 2.3 GHz additional price or 3.4 GHz additional price;

“applicant” means a body corporate making an application for a licence;

“applicant group” means in relation to an applicant—

- (a) that applicant;
- (b) each associate of that applicant; and
- (c) each person in respect of whom the applicant has delivered to OFCOM a completed document in the form set out in Schedule 3

“assignment stage” has the meaning given in regulation 16;

“assignment stage bid” means a 2.3 GHz assignment stage bid or 3.4 GHz assignment stage bid;

“assignment stage form” shall be construed in accordance with regulation 58;

“assignment stage round” shall be construed in accordance with regulation 57;

“associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;

“authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;

“base price” shall be construed in accordance with regulation 31;

“bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;

“bidder group” shall be construed in accordance with regulation 7;

“confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which, if it were made public or disclosed to another applicant (or potential applicant) or bidder or a member of their respective applicant or bidder group, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

“deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—

- (a) the time,
- (b) the date, or
- (c) the date, and the time on that date,

by which that requirement must be fulfilled by that person;

“deposit requirement” shall be construed in accordance with regulation 53;

“electronic auction system” means the system established by OFCOM for bidders to participate in the award process;

“eligibility limit” means, in relation to a bidder, a number of eligibility points which limits the bids that may be made by the bidder in the principal stage in accordance with these Regulations;

“eligibility points used” shall be construed in accordance with regulation 34;

“excess demand” shall be construed in accordance with regulation 45;

“final assignment stage deposit” shall be construed in accordance with regulation 77;

“final principal stage deposit” shall be construed in accordance with regulation 54;

“final withdrawal liability” has the meaning given in regulation 43;

“financial exposure” shall be construed in accordance with regulation 53;

“first category list” has the meaning given in regulation 27;

“GHz” means gigahertz;

“grant stage” has the meaning given in regulation 16;

“identified bids” has the meaning given in regulation 28;

“initial deposit” shall be construed in accordance with regulation 4;

“interim 2.3 GHz withdrawal liability” shall be construed in accordance with regulation 41;

“interim 3.4 GHz withdrawal liability” shall be construed in accordance with regulation 42;

“interim withdrawal liability” has the meaning given in regulation 40;

“last day for withdrawal” has the meaning given in regulation 12;

“licence” means either a 2.3 GHz licence, a 3.4 GHz licence or the replacement licence;

“material interest” means, whether held directly or indirectly—

(a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006(a)) in—

(i) any share which carries, or any shares which together carry, more than twenty five per cent of the votes entitled to be cast at a general meeting of the applicant or bidder; or

(ii) any share or shares in the case where the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or

(b) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

“MHz” means megahertz;

“most recent round” has the meaning given in regulation 24;

“OFCOM” means the Office of Communications;

“OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their website;

“overall bidder ranking list” has the meaning given in regulation 27;

“overall identified bid list” has the meaning given in regulation 28;

“pounds” means pounds sterling;

“pre-existing licence” is the licence with number 1040769 which authorises the establishment, installation and use of wireless telegraphy stations and wireless telegraphy apparatus at the 3.4 GHz frequency lots numbered 15 to 18 and 35 to 38 held jointly by UK Broadband Limited and UKB Networks Limited;

“pre-existing licence holder” means UK Broadband Limited, a company with company registration number 04713634 or UKB Networks Limited, a company with company registration number 08966182;

“previous round” has the meaning given in regulation 32;

“principal stage” has the meaning given in regulation 16;

“principal stage bid” shall be construed in accordance with regulation 20;

“principal stage form” shall be construed in accordance with regulation 19;

“principal stage round” shall be construed in accordance with regulation 18;

(a) 2006 c.46.

“replacement licence” has the meaning given in regulation 17;

“replacement lots” has the meaning given in regulation 17;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Part 4 of these Regulations;

“round price” shall be construed in accordance with regulations 22 and 23;

“second category list” has the meaning given in regulation 27;

“standing high bid” has the meaning given in regulation 24;

“standing high bid status” shall be construed in accordance with regulations 26 to 29;

“use a default waiver” has the meaning given in regulation 36;

“use a waiver” has the meaning given in regulation 35;

“valid 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 58;

“valid 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 58;

“valid assignment stage form” shall be construed in accordance with regulation 58;

“valid combination of 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 63;

“valid combination of 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 69;

“valid decision to use a waiver” shall be construed in accordance with regulation 19;

“valid decision to withdraw standing high bids” shall be construed in accordance with regulation 19;

“valid principal stage bid” shall be construed in accordance with regulation 19;

“valid principal stage form” shall be construed in accordance with regulation 19;

“waiver event” has the meaning given in regulation 37;

“winning 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 63;

“winning 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 69;

“winning assignment stage bid” is a winning 2.3 GHz assignment stage bid or a winning 3.4 GHz assignment stage bid;

“winning bidder” shall be construed in accordance with regulation 30;

“winning combination of valid 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 63;

“winning combination of valid 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 69;

“winning principal stage bid” shall be construed in accordance with regulation 30;

“withdraw standing high bids” has the meaning given in regulation 19;

(2) A reference in these Regulations to—

- (a) a “2.3 GHz frequency lot”
- (b) a “3.4 GHz frequency lot”

shall be construed in accordance with Schedule 1.

(3) A reference in these Regulations to a “lot type” or “lot” shall be construed in accordance with Schedule 1.

(4) A reference in these Regulations to a “numbered 2.3 GHz frequency lot”, a “numbered 3.4 GHz frequency lot” or a “block” of such lots shall be construed in accordance with Schedule 1.

(5) A reference in these Regulations to the “lower 3.4 GHz frequency range” or the “upper 3.4 GHz frequency range” shall be construed in accordance with Schedule 1.

PART 2

Application stage

Applications for grant of a licence

3. Applications for the grant of a licence shall only be made in accordance with the procedure set out in these Regulations.

Application

- 4.—(1) Only a body corporate may apply to OFCOM for a licence.
- (2) A body corporate may only make one application for a licence.
- (3) To apply for a licence, a body corporate must—
- (a) on the day or days specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day or those days specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by, and the warranty set out in Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
 - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its applicant group, a document in the form set out in Schedule 3 which has been—
 - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
 - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed;
 - (iii) a document specifying the applicant's 3.4 GHz minimum requirement in accordance with paragraph (4) in the form set out in Schedule 4, completed by the applicant and signed on its behalf by two authorised persons
 - (b) subject to paragraph (6), by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the applicant, an initial deposit of one hundred thousand pounds.
- (4) The applicant's 3.4 GHz minimum requirement is the number of 3.4 GHz frequency lots which the applicant specifies is the minimum number of 3.4 GHz frequency lots it will accept a 3.4 GHz licence for, whereby such number may not be more than four, and which will result in OFCOM assigning to that applicant, if it were to be a winning bidder for 3.4 GHz frequency lots, either none or at least the number of 3.4 GHz frequency lots specified.
- (5) The specification of a 3.4 GHz minimum requirement in accordance with paragraph (4) above is irrevocable and, once submitted, cannot be amended.
- (6) If one of the pre-existing licence holders indicates that it will participate in the assignment stage only in accordance with regulation 5(b), it is not required to pay into OFCOM's bank account an initial deposit of one hundred thousand pounds.
- (7) OFCOM shall publish the day, times and deadline on their website.

Application for a replacement licence

5.—(1) Where one of the pre-existing licence holders wishes to apply for a replacement licence pursuant to regulation 17, in addition to meeting the requirements of regulation 4(3)(a)–(b), it must also deliver to OFCOM in the same sealed envelope—

- (a) a document signed by two authorised persons on behalf of each of the pre-existing licence holders committing to the surrender of the pre-existing licence, in the form set out in Schedule 5; and

- (b) a document indicating whether it will participate in the principal stage and the assignment stage, or only in the assignment stage.

PART 3

Qualification stage

CHAPTER 1

Qualification

Notification of names of applicants and associates

6.—(1) OFCOM shall give notice to each applicant of—

- (b) the name of each other applicant and the names of their associates; and
- (c) the deadline by which each applicant must notify OFCOM under paragraph (3).

(2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its applicant group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its applicant group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM.

(4) If it appears to OFCOM from any application or notice under regulation 4(3) that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify a deadline by when each applicant concerned must notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group.

Recording of applicant group members

7.—(1) Where there has been a change in the composition of an applicant's applicant group since the date of the application, that applicant must deliver to OFCOM revised versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions following that change.

(2) OFCOM shall record the members of each applicant group, taking account of any changes notified under paragraph (1).

(3) Each applicant group so recorded shall constitute a bidder group.

Subsequent changes to bidder groups

8.—(1) An applicant or bidder may change its bidder group but, in relation to the award process, the applicant or bidder shall be subject to regulations 10(2), 86 and 88 if they apply to any such change.

(2) If a change involves the addition or departure of an associate, the applicant or bidder must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(i) which complies with those provisions following the change.

(3) If a change involves the addition of a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 3 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed.

Fitness to hold a licence

9.—(1) OFCOM shall, for each applicant which has submitted an application in accordance with regulation 4, determine whether that applicant is fit to hold a licence.

(2) In making their determination under paragraph (1), OFCOM shall take into account—

- (a) any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003(a);
- (b) whether the applicant is a fit and proper person to hold a licence having regard to the probity of—
 - (i) the applicant;
 - (ii) each other member of the applicant's bidder group; and
 - (iii) each director of each member of the applicant's bidder group;
- (c) whether any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) whether any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of the applicant's bidder group;
 - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
 - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (g) whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) whether any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
- (i) whether any person who is a member or a director or an employee of a member of the applicant's bidder group and is also a director or an employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups.

(3) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM require to make their determination.

(4) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.

(5) Where OFCOM determine that an applicant is not fit to hold a licence the applicant shall be disqualified from the award process.

(a) 2003 c.21.

(6) OFCOM shall inform an applicant which is disqualified of their decision and the reasons for it but that applicant's initial deposit shall not be forfeited because of that decision.

Qualification to participate in the award process

10.—(1) Each applicant—

- (a) which was not disqualified under regulation 9; and
- (b) which has no member of its bidder group which is also a member of the bidder group of another applicant which was not disqualified under regulation 9;

shall be qualified to participate in the award process.

(2) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant which was not disqualified under regulation 9 shall not be qualified to participate in the award process.

(3) Where an applicant is not qualified to participate in the award process OFCOM shall inform that applicant of that fact but that applicant's initial deposit shall not be forfeited for that reason.

Publication of names of qualified applicants

11.—(1) OFCOM shall notify each applicant qualified to participate of—

- (a) the name of each other applicant who is so qualified;
- (b) the names of their associates; and
- (c) where the pre-existing licence holder qualified to participate, whether it applied for a replacement licence.

(2) OFCOM shall publish the names of all applicants who are so qualified on OFCOM's website.

Withdrawal of an application

12.—(1) OFCOM shall notify each applicant qualified to participate of the last day for withdrawal from the award process ("last day for withdrawal") and shall publish the last day for withdrawal on OFCOM's website.

(2) If, on or before the last day for withdrawal, OFCOM receives notice from an applicant that it wishes to withdraw its application, signed by two authorised persons, the application shall be withdrawn and the applicant shall be excluded from the award process but that applicant's initial deposit shall not be forfeited for that reason.

(3) That applicant shall not be re-admitted to the award process.

(4) OFCOM shall notify all other applicants of the withdrawal.

Determination of number of bidders

13.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 12, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit.

(3) Where there are one or more bidders—

- (a) OFCOM shall refund to applicants which were not qualified, or withdrew in accordance with regulation 12, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit; and
- (b) OFCOM shall grant licences in accordance with the procedure set out in Part 4 of these Regulations.

(4) OFCOM shall publish the names of the bidders on OFCOM's website.

CHAPTER 2

Additional deposit and eligibility limit for the first principal stage round

Additional deposit before the first principal stage round

14.—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 15 for the purpose of calculating the bidder's eligibility limit for the first principal stage round.

(2) Where a bidder who does not pay an additional sum in pounds as a deposit, that bidder's eligibility limit, calculated in accordance with regulation 15, will be zero, and regulation 15(4) will apply.

(3) A bidder wishing to pay such an additional sum must, by a deadline specified by OFCOM, pay the additional sum into OFCOM's bank account with accompanying information which identifies the bidder.

Determination of bidder's eligibility limit for the first principal stage round

15.—(1) After the deadline specified in regulation 14(3), OFCOM shall determine each bidder's eligibility limit expressed in points for the first principal stage round in accordance with the requirements of this regulation.

(2) A bidder's eligibility limit for the first principal stage round shall be—

- (a) where the amount which the bidder has on deposit (including the initial deposit and any additional deposit) is thirty million pounds or less, the number which is the amount of such deposit divided by one million;
- (b) where the amount which the bidder has on deposit (including the initial deposit and any additional deposit) is more than thirty million pounds but not more than seventy million pounds, the number which is the sum of—
 - (i) thirty, and
 - (ii) the number which is the difference between—
 - (aa) the amount of such deposit; and
 - (bb) thirty million,divided by 2.5 million; and
- (c) where the amount which the bidder has on deposit (including the initial deposit and any additional deposit) is more than seventy million pounds, forty-six.

(3) Where the number which results from the calculations in paragraphs (2)(a) or (b) is not a whole number, that number shall be rounded down to the nearest whole number.

(4) Except in the case referred to in paragraph (5), where a bidder's eligibility limit calculated in accordance with this regulation is less than one point, that bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

(5) The case referred to in paragraph (4) above is 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.

PART 4

Bidding procedure

CHAPTER 1

Principal stage, assignment stage and grant stage

Principal stage, assignment stage and grant stage

16.—(1) The process for the award of licences shall consist of the procedure set out in Chapters 2 to 6 of this Part (“principal stage”), the procedure set out in Chapters 7 to 10 of this Part (“assignment stage”) and the procedure set out in Chapter 11 of this Part (“grant stage”).

(2) During the principal stage, OFCOM shall determine the total number of 2.3 GHz frequency lots and the total number of 3.4 GHz frequency lots which each winning bidder wins, but not the particular numbered 2.3 GHz frequency lots and particular numbered 3.4 GHz frequency lots.

(3) Following completion of the principal stage, OFCOM shall determine the particular numbered 2.3 GHz frequency lots and particular numbered 3.4 GHz frequency lots that are to be assigned to the winning bidders in accordance with the procedure set out in the assignment stage.

(4) Following completion of the assignment stage, OFCOM shall grant licences authorising the use of the frequencies determined in accordance with paragraph (3) in accordance with the grant stage.

Participation by the pre-existing licence holder

17.—(1) A replacement licence is a licence which may be granted to a pre-existing licence holder if it applies for a licence which authorises the use of a block of eight 3.4 GHz frequency lots to replace the pre-existing licence, is qualified to participate in the award process and is not excluded from the award process (it “bids for a replacement licence”).

(2) A pre-existing licence holder may only apply for a replacement licence if it commits to the surrender, and has procured the commitment of the other pre-existing licence holder to surrender the pre-existing licence on grant of the replacement licence pursuant to these Regulations.

(3) The pre-existing licence holder may choose to participate in both the principal stage and the assignment stage, or only in the assignment stage.

(4) Where the pre-existing licence holder bids for a replacement licence, it will be treated, for the purposes of the assignment stage, as a winning bidder in respect of eight 3.4 GHz frequency lots, but not any particular numbered 3.4 GHz frequency lots (the “replacement lots”) and may make assignment stage bids, without first having made principal stage bids, and without owing a base price.

(5) If the pre-existing licence holder participates only in the assignment stage, it may make assignment stage bids for the block of 3.4 GHz frequency lots which comprises the replacement lots.

(6) If the pre-existing licence holder is the winning bidder for any 3.4 GHz frequency lots as a consequence of bidding in the principal stage, such 3.4 GHz frequency lots will be referred to as the additional 3.4 GHz frequency lots.

(7) If the pre-existing licence holder participates in both the principal stage and the assignment stage, it may make assignment stage bids for—

- (a) the block of 3.4 GHz frequency lots which comprises the replacement lots (if it is not a winning bidder for either additional 3.4 GHz frequency lots, or 2.3 GHz frequency lots);
- (b) the block of 3.4 GHz frequency lots which comprises the replacement lots and any additional 3.4 GHz frequency lots won in the principal stage (if it is a winning bidder for additional 3.4 GHz frequency lots in the principal stage); and
- (c) the block of 2.3 GHz frequency lots won in the principal stage (if it is a winning bidder for 2.3 GHz frequency lots in the principal stage).

(8) If the pre-existing licence holder participates only in the assignment stage, or it participates in both the principal stage and the assignment stage, but was not a winning bidder in respect of additional 3.4 GHz frequency lots or 2.3 GHz frequency lots, OFCOM will grant the 3.4 GHz licence holder a replacement licence only.

(9) If the pre-existing licence holder participates in both the principal stage and the assignment stage and it won additional frequency lots in the principal stage, and subject to the requirements set out in regulation 82, OFCOM will grant the pre-existing licence holder both a replacement licence, a separate licence for any 2.3 GHz frequency lots in respect of which it was a winning bidder (if any) and a separate licence for any additional 3.4 GHz frequency lots in respect of which it was a winning bidder (if any).

(10) Whether or not a pre-existing licence holder bids for a replacement licence, only thirty 3.4 GHz lots (numbered 1 to 14 and 19 to 33) shall be included in the principal stage.

(11) If a pre-existing licence holder bids for a replacement licence, all thirty-eight 3.4 GHz frequency lots (numbered 1 to 38) shall be included in the assignment stage round.

(12) If a pre-existing licence holder does not bid for a replacement licence, only thirty 3.4 GHz lots (numbered 1 to 14 and 19 to 34) shall be included in the assignment stage round.

(13) Where the pre-existing licence holder applies for a replacement licence and qualifies to participate in the award process, but it is subsequently excluded from the award process under these Regulations, OFCOM will notify the other bidders of that fact.

CHAPTER 2

The principal stage

Principal stage rounds

18.—(1) During the principal stage, there shall be one or more principal stage rounds.

(2) During a principal stage round, a bidder may submit a principal stage form.

(3) A principal stage round shall commence and cease at the time notified by OFCOM under regulation 44.

(4) The number of principal stage rounds shall be determined in accordance with regulation 21.

Principal stage form

19.—(1) The principal stage form shall be provided to the bidder by OFCOM.

(2) On the form, a bidder must indicate—

- (a) the number of principal stage bids for 2.3 GHz frequency lots (if any) it wishes to make;
- (b) the number of principal stage bids for 3.4 GHz frequency lots (if any) it wishes to make;
- (c) whether or not it wishes to withdraw the standing high bid status assigned to principal stage bids (“withdraw standing high bids”) for 2.3 GHz frequency lots;
- (d) whether or not it wishes to withdraw standing high bids for 3.4 GHz frequency lots; and
- (e) whether or not it wishes to use a waiver.

(3) A bidder must not submit more than one principal stage form in each principal stage round, and the bidder’s principal stage form, once submitted, shall not be amended.

(4) A principal stage form is a valid principal stage form if it complies with this regulation, regulations 49, 50 and 51 and specifies principal stage bids, decisions whether or not to withdraw standing high bids and a decision whether or not to use a waiver in accordance with these Regulations.

(5) Each of the principal stage bids, the decisions whether or not to withdraw standing high bids and the decision whether or not to use a waiver are valid if they are specified on a valid principal stage form.

(6) Any bidder in the principal stage which, in the first principal stage round, does not specify on its principal stage form at least one valid principal stage bid for a lot shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

Principal stage bids

20. In any principal stage round, a distinct principal stage bid exists for each lot which a bidder wishes to be included in a licence, at the round price for a lot of that type, as expressed on the principal stage form.

Number of principal stage rounds

21.—(1) After each principal stage round, OFCOM shall determine whether there was a round event in that round in accordance with paragraph (4).

(2) Where OFCOM have determined that there was no round event in that principal stage round there shall be no further principal stage rounds, and OFCOM shall determine the winning principal stage bids in accordance with regulation 30.

(3) Except in the circumstances referred to in paragraph (5), where OFCOM have determined that there was a round event in that principal stage round, there shall be another principal stage round.

(4) There is a round event in a principal stage round where at least one of the following applies—

- (a) a bidder makes a valid principal stage bid for a 2.3 GHz frequency lot or for a 3.4 GHz frequency lot;
- (b) a bidder makes a valid decision to withdraw standing high bids; or
- (c) a bidder makes a valid decision to use a waiver or OFCOM uses a default waiver.

(5) The circumstances referred to in paragraph (3) are where, due to the length of time the principal stage has been ongoing, OFCOM determine that the principal stage will end after such further number of principal stage rounds as determined by OFCOM.

Round prices for the first principal stage round

22. For the first principal stage round—

- (a) the round price for each 2.3 GHz frequency lot shall be ten million pounds; and
- (b) the round price for each 3.4 GHz frequency lot shall be one million pounds.

Determination of round prices for subsequent principal stage rounds

23.—(1) For each subsequent principal stage round—

- (a) the round price for each 2.3 GHz frequency lot shall be determined by OFCOM in accordance with regulation 24; and
- (b) the round price for each 3.4 GHz frequency lot shall be determined by OFCOM in accordance with regulation 25.

(2) The round price shall be the same for each lot of the same type.

Round price for 2.3 GHz frequency lots

24.—(1) The round price for each 2.3 GHz frequency lot shall be the same as it was for the principal stage round most recently completed (the “most recent round”), except where paragraph (3) applies.

(2) Where paragraph (3) applies, the round price for each 2.3 GHz frequency lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the most recent round, there were four valid principal stage bids which OFCOM has assigned standing high bid status (“standing high bids”) for 2.3 GHz lots at the round price of the most recent round.

Round price for 3.4 GHz frequency lots

25.—(1) The round price for each 3.4 GHz frequency lot shall be the same as it was for the most recent round, except where paragraph (3) applies.

(2) Where paragraph (3) applies, the round price for each 3.4 GHz frequency lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the most recent round, there were thirty standing high bids for 3.4 GHz lots at the round price of the most recent round.

Determination of standing high bid status by Ofcom after each principal stage round

26.—(1) After each principal stage round, and before the next principal stage round, if any, OFCOM shall assign standing high bid status to bids made in the most recent round.

(2) OFCOM shall assign standing high bid status to bids made for each lot type separately following the process in regulations 27, 28 and 29.

Process for determining standing high bid status: ranking the bidders

27.—(1) For each lot type separately, OFCOM will divide the bidders into three categories such that—

- (a) the first category contains the bidders (if any) which made a valid principal stage bid for at least one lot at the round price of the most recent round (which includes bids made at the round price of the most recent round in rounds prior to the most recent round if such bids were not subsequently withdrawn);
- (b) the second category contains the bidders (if any, and if not already included in the first category) which made valid principal stage bids which were assigned standing high bid status immediately prior to the most recent round and such standing high bid status—
 - (i) was assigned to principal stage bids which were made at a round price which was lower than the round price of the most recent round;
 - (ii) was assigned to all such principal stage bids;
 - (iii) was not subsequently withdrawn; and
- (c) the third category contains the only bidder (if any, and if not already included in the first category), which made valid principal stage bids which were assigned standing high bid status immediately prior to the most recent round and such standing high bid status—
 - (i) was assigned to principal stage bids which were made at a round price which was lower than the round price of the most recent round;
 - (ii) was assigned to fewer principal stage bids than the total number of such principal stage bids made; and
 - (iii) was not subsequently withdrawn.

(2) Ofcom shall list all of the bidders in the first category by ranking them in a random order (“the first category list”).

(3) Ofcom shall list all of the bidders in the second category by ranking them in a random order (“the second category list”).

(4) Ofcom shall then create an overall list of the bidders in the three categories such that the first category list prevails over the second category list which in turn prevails over the third category bidder to create an overall ranking (the “overall bidder ranking list”).

Process for determining standing high bid status: ranking the bids

28.—(1) Ofcom shall identify valid principal stage bids for each bidder in the overall ranking list.

(2) The valid principal stage bids to be identified (the “identified bids”) are—

- (a) for each of the bidders in the first category list, the valid principal stage bids made at the round price of the most recent round, but, where the bidder made valid principal stage bids at the round price of the most recent round in more than one principal stage round, the valid principal stage bids which were made in the principal stage round in which the bidder made the highest number of principal stage bids at the round price of the most recent round.
- (b) for each of the bidders in the second category list and the bidder in the third category, each valid principal stage bid which was a standing high bid immediately prior to the most recent round.

(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 prevail over those of a bidder which is ranked lower on that list; and
- (b) all bids made by a bidder are ranked in random order on that list.

(4) Ofcom shall then create a list of valid principal stage bids for that principal stage round which are to be assigned standing high bid status.

Process for determining standing high bid status: assigning standing high bid status to the bids

29.—(1) OFCOM shall assign standing high bid status to valid principal stage bids in the overall identified bid list, starting from the top of the list, by giving such status to bids in the order established in the list, such that bids placed higher in the list prevail over bids placed lower in the list.

(2) OFCOM shall assign standing high bid status to valid principal stage bids until there are no more bids or until the number of principal stage bids to which OFCOM has assigned standing high bid status equates to the number of lots of that type which are available in the award process.

Determination of the winning principal stage bids

30.—(1) Where OFCOM have determined that there shall be no further principal stage rounds—

- (a) the standing high bids for 2.3 GHz frequency lots in the last principal stage round shall become the winning principal stage bids for 2.3 GHz frequency lots and the bidders which made such standing high bids for 2.3 GHz frequency lots shall become the winning bidders for 2.3 GHz frequency lots; and
- (b) subject to paragraph (2), the standing high bids for 3.4 GHz frequency lots in the last principal stage round shall become the winning principal stage bids for 3.4 GHz frequency lots and the bidders which made such standing high bids for 3.4 GHz frequency lots shall become the winning bidders for 3.4 GHz frequency lots.

(2) Where a bidder has specified a 3.4 GHz minimum requirement in accordance with regulation 4 and OFCOM has assigned standing high bid status to fewer principal stage bids for 3.4 GHz frequency lots made by such bidder than the number of the 3.4 GHz minimum requirement—

- (a) the bidder’s standing high bids for 3.4 GHz frequency lots will not become winning principal stage bids; and
- (b) a different bidder will not become the winning bidder for such 3.4 GHz frequency lots.

Determination of base price

31. The base price for—

- (a) each winning principal stage bid for a 2.3 GHz frequency lot will be equal to the round price for a 2.3 GHz frequency lot at which that bid was made;
- (b) the winning principal stage bids for 2.3 GHz frequency lots won by a bidder will be equal to the round price referred to in sub-paragraph (a) multiplied by the number of 2.3 GHz frequency lots won by the principal stage bidder;
- (c) each winning principal stage bid for a 3.4 GHz frequency lot will be equal to the round price for a 3.4 GHz frequency lot at which that bid was made; and
- (d) the winning principal stage bids for 3.4 GHz frequency lots won by a bidder will be equal to the round price referred to in sub-paragraph (c), multiplied by the number of 3.4 GHz frequency lots won by the principal stage bidder.

CHAPTER 3

Further constraints for principal stage bids, decisions to withdraw standing high bids and decisions to use a waiver

SECTION 1

Number of principal stage bids when holding standing high bids

Number of principal stage bids when holding standing high bids

32.—(1) If the price of lots of a particular type has changed from the round prior to that principal stage round (the “previous round”), when completing the principal stage form, a bidder which made bids for lots of that type to which OFCOM assigned standing high bid status must (if making bids for lots of that type) specify bids for a number of lots (of that type) which is the same as, or higher than the number of lots for which the bidder made a principal stage bid and to which OFCOM assigned standing high bid status.

(2) If the price of lots of a particular type has not changed from the previous round, when completing the principal stage form, a bidder which made bids for lots of that type to which OFCOM assigned standing high bid status must (if making bids for lots of that type) specify bids for a number of lots (of that type) which is higher than the number of lots for which the bidder made a principal stage bid and to which OFCOM assigned standing high bid status.

SECTION 2

3.4 GHz Minimum requirement

3.4 GHz Minimum requirement

33. Where the bidder has specified a 3.4 GHz minimum requirement in accordance with regulation 4, the number of principal stage bids for 3.4 GHz frequency lots the bidder specifies on the principal stage form must be either zero or at least the number of the 3.4 GHz minimum requirement as specified by the bidder under regulation 4.

SECTION 3
Eligibility limit

Eligibility limit

34.—(1) After each principal stage round, except the last principal stage round, OFCOM shall determine an eligibility limit, expressed as points, for each bidder for the next principal stage round and shall notify that eligibility limit to that bidder in accordance with regulation 45.

(2) In a principal stage round, a bidder must specify principal stage bids on its principal stage form such that the number of eligibility points used in that principal stage round, does not exceed the bidder's eligibility limit for that principal stage round.

(3) The number of eligibility points used by a bidder in a principal stage round shall be the number equal to the sum of the first number calculated in accordance with paragraph (4) and the second number calculated in accordance with paragraph (5).

(4) The first number referred to in paragraph (3) is either—

- (a) where the bidder has specified a number of principal stage bids for 2.3 GHz frequency lots, the number of principal stage bids for 2.3 GHz frequency lots in that principal stage round specified on the principal stage form, multiplied by four; or
- (b) where the bidder has not specified a number of principal stage bids for 2.3 GHz frequency lots, the number of principal stage bids for 2.3 GHz frequency lots to which OFCOM assigned standing high bid status immediately prior to the most recent round and which the bidder does not withdraw in that principal stage round, multiplied by four.

(5) The second number in paragraph (3) is either—

- (a) where the bidder has specified a number of principal stage bids for 3.4 GHz frequency lots, the number of principal stage bids for 3.4 GHz frequency lots in that principal stage round specified on the principal stage form; or
- (b) where the bidder has not specified a number of principal stage bids for 3.4 GHz frequency lots, the number of principal stage bids for 3.4 GHz frequency lots to which OFCOM assigned standing high bid status immediately prior to the most recent round and which the bidder does not withdraw in that principal stage round.

(6) A bidder's eligibility limit for a principal stage round shall be the number determined—

- (a) for the first principal stage round, in accordance with regulation 15; and
- (b) for the second principal stage round and each subsequent principal stage round, in accordance with paragraphs (7) to (8).

(7) Except in the circumstances set out in paragraph (9), and except for the first principal stage round, the bidder's eligibility limit for a principal stage round shall be equal to the number of eligibility points used by the bidder in the previous round.

(8) In the circumstances set out in paragraph (9), the bidder's eligibility limit for a principal stage round shall be equal to the eligibility limit determined for the previous round.

(9) The circumstances referred to in paragraphs (7) and (8) are where—

- (a) the bidder used a waiver in accordance with regulation 35; or
- (b) OFCOM maintained the bidder's eligibility limit by using a default waiver in accordance with regulation 36.

Maintaining the eligibility limit by the use of a waiver

35.—(1) In the second and each subsequent principal stage round, a bidder may indicate on its principal stage form that it wishes to waive the need to submit one or more bids to maintain its eligibility limit (as determined for that round), for the following principal stage round ("use a waiver") in the circumstances set out in this regulation.

(2) A bidder may specify on its principal stage form that it wishes to use a waiver if—

- (a) the bidder does not, in that principal stage round, specify on its principal stage form—
 - (i) that it wishes to make a principal stage bid for at least one 2.3 GHz frequency lot;
 - (ii) that it wishes to make a principal stage bid for at least one 3.4 GHz frequency lot;
 - (iii) that it wishes to withdraw its standing high bids for 2.3 GHz frequency lots; or
 - (iv) that it wishes to withdraw its standing high bids for 3.4 GHz frequency lots; and
- (b) the number of eligibility points associated with the bidder’s principal stage bids to which OFCOM assigned standing high bid status immediately prior to the most recent round is lower than the bidder’s eligibility limit for that principal stage round; and
- (c) in all earlier principal stage rounds considered together there have not been more than two waiver events, as determined in accordance with regulation 37, in respect of that bidder.

OFCOM maintaining the eligibility limit by use of a default waiver

36.—(1) After the second and each subsequent principal stage round OFCOM will determine whether it will maintain a bidder’s eligibility limit for the next round (“use a default waiver”), in the circumstances set out in this regulation.

- (2) OFCOM will maintain a bidder’s eligibility limit if—
 - (a) the bidder did not, in the most recent round, submit a valid principal stage form; and
 - (b) the number of eligibility points associated with its principal stage bids to which OFCOM assigned standing high bid status immediately prior to the most recent round is lower than the bidder’s eligibility limit for the most recent round; and
 - (c) in all earlier principal stage rounds considered together there have not been more than two waiver events, as determined in accordance with regulation 37, in respect of that bidder.

Waiver event

37.—(1) A waiver event is where the bidder has used a waiver or OFCOM has used a default waiver on behalf of a bidder.

(2) Before and after each principal stage round, OFCOM will notify each bidder in accordance with regulations 44 and 45 of the maximum number of subsequent principal stage rounds in which a waiver event is allowed to take place in order for the bidder to maintain its eligibility limit, whereby that number is the difference between three and the number of earlier principal stage rounds in which there has been a waiver event.

SECTION 4

Deposit constraint

Deposit constraint on bidding

38.—(1) Where the amount in pounds of a bidder’s deposit at the end of the working day before the principal stage round, is less than the deposit requirement, as determined in accordance with regulation 53, that bidder may not submit a principal stage form in that principal stage round or any subsequent principal stage round.

(2) Such a bidder is not excluded from the award process for that reason, and any principal stage bids made by that bidder which OFCOM has assigned standing high bid status following the last principal stage bid round will become winning principal stage bids.

SECTION 5

Withdrawing of Standing High Bids

Withdrawing of Standing High Bids

39.—(1) Subject to paragraph (2), in the second and each subsequent principal stage round, a bidder may indicate on its principal stage form that it wishes to withdraw its standing high bids for one or both lot types so that the principal stage bids for lots of that type made by the bidder will not be considered for the determination of standing high bid status after the round in which the standing high bids have been withdrawn has closed.

(2) A bidder may not withdraw standing high bids for a type of lot if—

- (a) the bidder makes principal stage bids for one or more lots of that type in that principal stage round;
- (b) the bidder has withdrawn standing high bids for lots of either type in five prior principal stage rounds; and
- (c) the bidder has withdrawn standing high bids for lots of that type in an earlier principal stage round and the round price for that type has not increased relative to the round price in that earlier principal stage round.

(3) Where a bidder withdraws standing high bids for lots of a type, it shall withdraw all its standing high bids for lots of that type.

(4) Before and after each principal stage round, except after the final principal stage round, OFCOM will notify each bidder in accordance with regulations 44 and 45 of the maximum number of subsequent principal stage rounds in which the bidder may withdraw standing high bids, whereby that number is the difference between five and the number of earlier principal stage rounds in which the bidder withdrew standing high bids.

Interim withdrawal liability

40.—(1) After each principal stage round, except after the final principal stage round, and following the determination of standing high bids in respect of that principal stage round, OFCOM shall determine the sum in pounds, if any, which each bidder would be liable to pay if the most recent round were the final principal stage round (the “interim withdrawal liability”) and shall notify the interim withdrawal liability to that bidder in accordance with regulations 44 and 45.

(2) A bidder’s interim withdrawal liability shall be the sum of the bidder’s interim 2.3 GHz withdrawal liability determined in accordance with regulation 41 and the bidder’s interim 3.4 GHz withdrawal liability determined in accordance with regulation 42.

Interim 2.3 GHz withdrawal liability

41.—(1) Except in the circumstances set out in paragraph (3), a bidder’s interim 2.3 GHz withdrawal liability shall be zero.

(2) In the circumstances set out in paragraph (3), a bidder’s interim 2.3 GHz withdrawal liability shall be the sum in pounds which is the figure calculated in accordance with paragraph (4) multiplied by the round price in the principal stage round in which the withdrawn standing high bids for 2.3 GHz frequency lots were made.

(3) The circumstances referred to in paragraphs (1) and (2) are where—

- (a) the bidder withdrew standing high bids for 2.3 GHz frequency lots in a principal stage round;
- (b) one or more 2.3 GHz frequency lots were not assigned standing high bid status after any principal stage round following the principal stage round in which the bidder withdrew standing high bids for 2.3 GHz frequency lots; and
- (c) the bidder has not, in any principal stage round following the last principal stage round in which the bidder withdrew standing high bids for 2.3 GHz frequency lots, made further

principal stage bids for at least as many 2.3 GHz frequency lots as the number of 2.3 GHz frequency lots withdrawn.

- (4) The figure referred to in paragraph (2) is the difference between—
- (a) the number of standing high bids for 2.3 GHz frequency lots withdrawn by the bidder in the last round in which the bidder withdrew standing high bids for 2.3 GHz frequency lots; and
 - (b) the highest number of principal stage bids for 2.3 GHz frequency lots made by that bidder in any principal stage round following the last round in which the bidder withdrew standing high bids for 2.3 GHz frequency lots.

Interim 3.4 GHz withdrawal liability

42.—(1) Except in the circumstances set out in paragraph (3), a bidder’s interim 3.4 GHz withdrawal liability shall be zero.

(2) In the circumstances set out in paragraph (3), a bidder’s interim 3.4 GHz withdrawal liability shall be the sum in pounds which is the figure calculated in accordance with paragraph (4) multiplied by the round price in the principal stage round in which the withdrawn standing high bids for 3.4 GHz frequency lots were made.

- (3) The circumstances referred to in paragraphs (1) and (2) are where—
- (a) the bidder withdrew standing high bids for 3.4 GHz frequency lots in a principal stage round;
 - (b) one or more 3.4 GHz frequency lots were not assigned standing high bid status after any principal stage round following the principal stage round in which the bidder withdrew standing high bids for 3.4 GHz frequency lots; and
 - (c) the bidder has not, in any principal stage round following the last principal stage round in which the bidder withdrew standing high bids for 3.4 GHz frequency lots, made further principal stage bids for at least as many 3.4 GHz frequency lots as the number of 3.4 GHz frequency lots withdrawn.
- (4) The figure referred to in paragraph (2) is the difference between—
- (a) the number of standing high bids for 3.4 GHz frequency lots withdrawn by the bidder in the last round in which the bidder withdrew standing high bids for 3.4 GHz frequency lots; and
 - (b) the highest number of principal stage bids for 3.4 GHz frequency lots made by that bidder in any principal stage round following the last round in which the bidder withdrew standing high bids for 3.4 GHz frequency lots.

Final withdrawal liability

43.—(1) Following the determination of the winning principal stage bids, OFCOM shall determine the sum in pounds, if any, which each bidder is liable to pay (“the final withdrawal liability”) and shall notify the final withdrawal liability to that bidder in accordance with regulation 47.

(2) A bidder’s final withdrawal liability shall be equal to the bidder’s interim withdrawal liability, determined in relation to the final principal stage round in accordance with regulation 40.

CHAPTER 4

Information released during and after the principal stage

Notice to be given to bidders before principal stage rounds

44.—(1) Before the start of each principal stage round, OFCOM shall notify each bidder—

- (a) for whom OFCOM has determined an eligibility limit for that principal stage round in accordance with regulation 34 which is at least one point; and
 - (b) who has complied with the deposit requirement in accordance with regulation 53;
- of the information set out in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) the date on which, and the times on that date within which, the principal stage round will take place;
- (b) the round price for—
 - (i) each 2.3 GHz frequency lot; and
 - (ii) each 3.4 GHz frequency lot;
- (c) the bidder's eligibility limit for that principal stage round;
- (d) the maximum number of subsequent principal stage rounds in which a waiver event is allowed to take place in relation to that bidder in order for the bidder to maintain its eligibility limit;
- (e) for each type of lot, the number of bids made by the bidder which are standing high bids after the most recent round;
- (f) the maximum number of subsequent principal stage rounds in which the bidder may withdraw standing high bids; and
- (g) the interim withdrawal liability.

Notification of information to bidders after each principal stage round

45.—(1) After the end of each principal stage round, except the last principal stage round, and before the start of the next principal stage round, OFCOM shall notify each bidder—

- (a) for whom OFCOM has determined an eligibility limit for that next principal stage round in accordance with regulation 34 which is at least one point; and
 - (b) who has complied with the deposit requirement in accordance with regulation 53;
- of the information referred to in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) for each lot type, the number of principal stage bids made by the bidder in the most recent round;
- (b) for each lot type, the number of principal stage bids made by the bidder which OFCOM has assigned standing high bid status after the most recent round;
- (c) for each lot type, whether the bidder withdrew standing high bids in the most recent round;
- (d) the interim withdrawal liability;
- (e) the round price for—
 - (i) each 2.3 GHz frequency lot; and
 - (ii) each 3.4 GHz frequency lot;in the most recent round;
- (f) for each lot type separately, the amount in MHz which is the smallest strictly positive multiple of 20 which is greater than the excess demand as determined in accordance with paragraph (3) or (5) of this regulation, each as applicable;
- (g) the bidder's eligibility limit for the next principal stage round;
- (h) the maximum number of subsequent principal stage rounds in which a waiver event is allowed to take place in relation to that bidder in order for the bidder to maintain its eligibility limit; and

- (i) the maximum number of subsequent principal stage rounds in which the bidder may withdraw standing high bids;

(3) The excess demand for 2.3 GHz frequency lots is the amount in MHz ($ed_{2.3\text{ GHz}}$) which is calculated in accordance with the formula set out in paragraph (4).

(4) The formula is—

$$ed_{2.3\text{ GHz}} = (a + b - 4) \times 10$$

where—

- (a) “a” is the total number of principal stage bids made by all bidders who have made bids for 2.3 GHz frequency lots in the most recent round;
- (b) “b” is the total number of standing high bids immediately prior to the most recent round held by all bidders who have not made bids for 2.3 GHz frequency lots in the most recent round, and who did not withdraw standing high bids for 2.3 GHz frequency lots in the most recent round.

(5) The excess demand for 3.4 GHz frequency lots is the amount in MHz ($ed_{3.4\text{ GHz}}$) which is calculated in accordance with the formula set out in paragraph (6).

(6) The formula is—

$$ed_{3.4\text{ GHz}} = (x + y - 30) \times 5$$

where—

- (a) “x” is the total number of principal stage bids made by all bidders who have made bids for 3.4 GHz frequency lots in the most recent round;
- (b) “y” is the total number of standing high bids after the round prior to the most recent round held by all bidders who have not made bids for 3.4 GHz frequency lots in the most recent round, and who did not withdraw standing high bids for 2.3 GHz frequency lots in the most recent round.

Publication of information at the end of each day during the principal stage

46. After the end of the last principal stage round to take place on any given day, OFCOM shall publish on their website, in relation to that last principal stage round—

- (a) the round price for—
 - (i) each 2.3 GHz frequency lot; and
 - (ii) each 3.4 GHz frequency lot; and
- (b) for each lot type separately, the amount in MHz which is the smallest strictly positive multiple of 20 which is greater than the excess demand as determined in accordance with regulation 45.

Notification of results of the principal stage to bidders

47. After the end of the last principal stage round, and following the determination of the winning principal stage bids under regulation 30 and the determination of the base price for each winning principal stage bids under regulation 31, OFCOM shall notify each bidder of—

- (a) the end of the principal stage;
- (b) for each lot type, the number of winning principal stage bids made by the bidder;
- (c) the base price for—
 - (i) each 2.3 GHz frequency lot; and
 - (ii) each 3.4 GHz frequency lot;
- (d) the names of the winning bidders, and in respect of each of them, the number of 2.3 GHz frequency lots and the number of 3.4 GHz frequency lots won; and

- (e) in respect of all bidders whose final withdrawal liability is greater than zero in accordance with regulation 43, the name of such bidders and the amount of such final withdrawal liability.

Publication of results of the principal stage

48. After the notification given in accordance with regulation 47, OFCOM shall publish on their website—

- (a) the names of the winning bidders;
- (b) in respect of each such winning bidder, the number of 2.3 GHz frequency lots and the number of 3.4 GHz frequency lots won;
- (c) the base price for each 2.3 GHz frequency lot and each 3.4 GHz frequency lot;
- (d) the number of 2.3 GHz frequency lots and the number of 3.4 GHz frequency lots not won by any bidder; and
- (e) in respect of all bidders whose final withdrawal liability is greater than zero in accordance with regulation 43, the name of such bidders and the amount of such final withdrawal liability.

CHAPTER 5

Procedure for principal stage

Submission of principal stage form to OFCOM

49.—(1) A bidder must submit the completed principal stage form to OFCOM by using the electronic auction system, except as provided for in regulation 50.

(2) The completed principal stage form must be received by OFCOM by the end of time notified by OFCOM under regulation 44(a) as the end of the principal stage round.

Alternative method for submission of principal stage form

50.—(1) Where OFCOM are satisfied that a bidder is unable to submit a principal stage form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall inform the bidder of an alternative method of submitting the principal stage form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the principal stage form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Incomplete or defective principal stage form

51.—(1) Where, due to the manner of completion, a principal stage form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to its decisions on the principal stage form, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to its decisions on the principal stage form.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, the principal stage form in its entirety shall be valid and be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the principal stage form in its entirety shall be invalid and rejected by OFCOM and the principal stage bids, the decisions whether or not to withdraw standing high bids and the decision whether or not to use a waiver shall not be valid.

Notification that principal stage bid not valid

52. Where a bidder submits a principal stage form that is not a valid principal stage form during a principal stage round, OFCOM shall, after the end of that principal stage round, notify the bidder of that fact and shall give the reasons why the principal stage form is not a valid principal stage form.

CHAPTER 6

Deposits during and following the principal stage

Deposits during the principal stage

53.—(1) At any time before or during the principal stage, OFCOM may notify bidders of a percentage, whereby such percentage shall not be more than one hundred, to enable bidders to calculate the deposit requirement.

(2) The deposit requirement shall be the amount in pounds which is equal to such percentage of the bidder's financial exposure as notified to the bidder by OFCOM in accordance with paragraph (1), which the bidder is required to keep on deposit during the principal stage.

(3) The amount of the deposit requirement shall be calculated at the end of the last principal stage round to take place on each day, and any difference between the bidder's deposit and the amount of the deposit requirement must be paid into OFCOM's bank account, with accompanying information which identifies the bidder, by the end of the next working day.

(4) A bidder's financial exposure following a principal stage round shall be the amount which is equal to the sum of—

- (a) the amount in pounds which is the number of that bidder's principal stage bids for 2.3 GHz frequency lots which OFCOM assigned standing high bid status following that principal stage round, multiplied by the round price at which the bids for those lots were made;
- (b) the amount in pounds which is the number of that bidder's principal stage bids for 3.4 GHz frequency lots which OFCOM assigned standing high bid status following that principal stage round, multiplied by the round price at which the bids for those lots were made; and
- (c) that bidder's interim withdrawal liability.

Final principal stage deposit

54.—(1) The bidder is required to pay the final principal stage deposit into OFCOM's bank account, with accompanying information which identifies the bidder, by 5 pm on the working day following the notification given by OFCOM in accordance with regulation 47.

(2) The final principal stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is equal to the sum of—

- (a) the base price for that bidder's winning principal stage bids for 2.3 GHz frequency lots determined under regulation 31(b);
- (b) the base price for that bidder's winning principal stage bids for 3.4 GHz frequency lots determined under regulation 31(d); and
- (c) the final withdrawal liability.

(3) Where a bidder does not satisfy the requirements set out in paragraph (2)—

- (a) OFCOM shall notify the bidder; and
- (b) the bidder shall be able to participate in the assignment stage, but shall not be able to make assignment stage bids.

CHAPTER 7

Assignment stage: Preliminary

Assignment of frequencies without bidding

55.—(1) Where there is only one winning bidder for all of the 2.3 GHz frequency lots, OFCOM shall assign all the 2.3 GHz frequency lots to that winning bidder.

(2) Where—

- (a) the pre-existing licence holder bids for a replacement licence; and
- (b) the pre-existing licence holder is the winning bidder for all of the 3.4 GHz frequency lots, OFCOM shall assign all the 3.4 GHz frequency lots to the pre-existing licence holder.

(3) Where—

- (a) the pre-existing licence holder does not bid for a replacement licence; and
- (b) there is only one winning bidder for all of the 3.4 GHz frequency lots, OFCOM shall assign all the 3.4 GHz frequency lots to that winning bidder.

(4) Where—

- (a) the pre-existing licence holder does not bid for a replacement licence; and
- (b) if OFCOM were to prepare a 3.4 GHz assignment stage option list for each winning bidder in accordance with regulation 67, such 3.4 GHz assignment stage option list would have only one 3.4 GHz assignment stage option for each bidder, then OFCOM shall assign the 3.4 GHz frequency lots in accordance with such 3.4 GHz assignment stage options and no bidding will take place.

Assignment of frequencies by bidding

56.—(1) Except in the case referred to in regulation 55(1), the specific frequencies that are to be assigned to the winning bidder or bidders for the 2.3 GHz frequency lots shall be determined by bidding in the assignment stage in accordance with the procedure set out in regulations 60 to 64.

(2) Except in the cases referred to in regulation 55(2), 55(3) and 55(4), the specific frequencies that are to be assigned to the winning bidder or bidders for the 3.4 GHz frequency lots shall be determined by bidding in the assignment stage in accordance with the procedure set out in regulations 65 to 72.

Assignment stage round

57.—(1) Where OFCOM assigns frequency lots in accordance with one or more of the procedures referred to in regulations 60 to 64 or regulations 65 to 72, there shall be one assignment stage round.

(2) During the assignment stage round, a bidder may submit an assignment stage form.

(3) The assignment stage round shall commence and cease at the time notified by OFCOM under regulation 73.

Assignment stage form

58.—(1) The assignment stage form is the form provided to the bidder by OFCOM.

(2) On the assignment stage form, a bidder must specify—

- (a) the bidder's 2.3 GHz assignment stage bids, if any, in accordance with regulation 62
- (b) the bidder's 3.4 GHz assignment stage bids, if any, in accordance with regulation 68.

(3) A bidder must not submit more than one assignment stage form, and the bidder's assignment stage form, once submitted, shall not be amended.

(4) An assignment stage form is a valid assignment stage form if it complies with this regulation, regulations 74, 75 and 76 and specifies assignment stage bids which comply with regulations 60 to 72 and 77, each as appropriate.

(5) A bidder eligible to bid in the assignment stage in accordance with regulations 60 and 65 who does not submit a valid assignment stage form will be deemed to have made an assignment stage bid with a value of zero pounds for all 2.3 GHz assignment stage options and all 3.4 GHz assignment stage options, each as appropriate.

(6) A 2.3 GHz assignment stage bid is a valid 2.3 GHz assignment stage bid and a 3.4 GHz assignment stage bid is a valid 3.4 GHz assignment stage bid, if it is specified on a valid assignment stage form.

Determining winning assignment stage bids

59. OFCOM shall determine the winning 2.3 GHz assignment stage bids and the winning 3.4 GHz assignment stage bids in accordance with regulations 63 and 69, each as appropriate, following—

- (a) the end of the assignment stage round as notified by OFCOM under regulation 73; and
- (b) the passing of the deadline for making the final assignment stage deposit under regulation 77.

CHAPTER 8

2.3 GHz frequency assignments determined by bidding

Bidding for 2.3 GHz frequency lots in the assignment stage

60.—(1) Only winning bidders for 2.3 GHz frequency lots may bid for 2.3 GHz frequency lots in the assignment stage.

(2) A 2.3 GHz assignment stage bid shall be a bid for a licence which authorises the use of frequencies corresponding to the particular numbered 2.3 GHz frequency lots comprised in a 2.3 GHz frequency block.

(3) OFCOM shall determine the 2.3 GHz frequency blocks a bidder may bid for.

(4) The list of possible 2.3 GHz frequency blocks provided to each bidder may be different for each bidder.

(5) The list of possible 2.3 GHz frequency blocks shall be known as the “2.3 GHz assignment stage option list” and each block of lots in that list shall be known as a “2.3 GHz assignment stage option”.

Preparing a 2.3 GHz assignment stage option list for each bidder

61.—(1) OFCOM shall determine which 2.3 GHz assignment stage options shall be included in the 2.3 GHz assignment stage option list for each bidder which is eligible to bid.

(2) A bidder’s 2.3 GHz assignment stage options shall be each of those 2.3 GHz frequency blocks which satisfy the following conditions—

- (a) the number of 2.3 GHz frequency lots contained in the 2.3 GHz frequency block is equal to the number of that bidder’s winning principal stage bids for 2.3 GHz frequency lots;
- (b) the numbered 2.3 GHz frequency lots contained in the 2.3 GHz frequency block together form a single block of numbered 2.3 GHz frequency lots; and
- (c) if that bidder were assigned the 2.3 GHz frequency lots contained in the 2.3 GHz frequency block the following conditions would be satisfied—
 - (i) each other bidder could be assigned 2.3 GHz frequency lots contained in a 2.3 GHz frequency block that, in respect of that bidder’s 2.3 GHz winning principal stage bids, satisfies the conditions in sub-paragraphs (a) and (b); and

- (ii) the 2.3 GHz frequency lots not assigned to other bidders would form a single block of numbered 2.3 GHz frequency lots.

2.3 GHz assignment stage bids

62.—(1) In order to make a valid 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the base price for that bidder's winning principal stage bids determined under regulation 31(b), for a licence that authorises the use of the frequencies corresponding to the block of numbered 2.3 GHz frequency lots that is the 2.3 GHz assignment stage option.

(2) A bidder may make no more than one 2.3 GHz assignment stage bid for each 2.3 GHz assignment stage option.

(3) A bidder is not required to make a 2.3 GHz assignment stage bid.

(4) Where a bidder does not make a valid 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option—

- (a) that bidder will be deemed to have made a 2.3 GHz assignment stage bid with a value of zero pounds for that 2.3 GHz assignment stage option; and
- (b) OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the bid is not a valid 2.3 GHz assignment stage bid.

Determination of the winning 2.3 GHz assignment stage bids

63.—(1) The winning 2.3 GHz assignment stage bids shall be those valid 2.3 GHz assignment stage bids that comprise the winning combination of valid 2.3 GHz assignment stage bids.

(2) The winning combination of valid 2.3 GHz assignment stage bids shall be the valid combination of 2.3 GHz assignment stage bids having the highest total value of amounts bid.

(3) A combination of valid 2.3 GHz assignment stage bids is a valid combination of 2.3 GHz assignment stage bids if—

- (a) within that combination there is one valid 2.3 GHz assignment stage bid from each winning bidder eligible to bid under regulation 60;
- (b) each of those valid 2.3 GHz assignment stage bids is for a 2.3 GHz assignment stage option as determined by OFCOM for the bidder under regulation 61;
- (c) no numbered 2.3 GHz frequency lot is included in more than one of the 2.3 GHz assignment stage options included in the combination of valid 2.3 GHz assignment stage bids; and
- (d) the numbered 2.3 GHz frequency lots not included in the combination of valid 2.3 GHz assignment stage bids taken together form a single block of numbered 2.3 GHz frequency lots.

(4) Where there is more than one valid combination of 2.3 GHz assignment stage for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of 2.3 GHz assignment stage bids to determine the winning combination of valid 2.3 GHz assignment stage bids.

Determination of 2.3 GHz additional prices

64. In respect of each winning 2.3 GHz assignment stage bid, OFCOM shall determine an amount in whole pounds ("2.3 GHz additional price") which shall be payable by the relevant winning bidder in accordance with Schedule 6.

CHAPTER 9

3.4 GHz frequency assignments determined by bidding

Bidding for 3.4 GHz frequency lots in the assignment stage

65.—(1) Only winning bidders for 3.4 GHz frequency lots may bid for 3.4 GHz frequency lots in the assignment stage.

(2) A 3.4 GHz assignment stage bid shall be a bid for a licence which authorises the use of frequencies corresponding to the particular numbered 3.4 GHz frequency lots comprised in a 3.4 GHz frequency block.

(3) OFCOM shall determine the 3.4 GHz frequency blocks a bidder may bid for.

(4) The list of possible 3.4 GHz frequency blocks provided to each bidder may be different for each bidder.

(5) The list of possible 3.4 GHz frequency blocks shall be known as the “3.4 GHz assignment stage option list” and each block of lots in that list shall be known as a “3.4 GHz assignment stage option”.

Preparing a 3.4 GHz assignment stage option list for each bidder if the pre-existing licence holder bids for a replacement licence

66. Where the pre-existing licence holder bids for a replacement licence, a bidder’s 3.4 GHz assignment stage options shall be each of those 3.4 GHz frequency blocks which satisfy the following conditions—

- (a) the number of 3.4 GHz frequency lots contained in the 3.4 GHz frequency block is equal to
 - (i) for the pre-existing licence holder, the sum of the number of his winning principal stage bids for additional 3.4 GHz frequency lots, if any, and the number eight;
 - (ii) for each other bidder, the number of that bidder’s winning principal stage bids for 3.4 GHz frequency lots;
- (b) the numbered 3.4 GHz frequency lots contained in the 3.4 GHz frequency block together form a single block of numbered 3.4 GHz frequency lots; and
- (c) if that bidder were assigned the 3.4 GHz frequency lots contained in the 3.4 GHz frequency block the following conditions would be satisfied—
 - (i) each other bidder could be assigned 3.4 GHz frequency lots contained in a 3.4 GHz frequency block that, in respect of that bidder’s 3.4 GHz winning principal stage bids, satisfies the conditions in sub-paragraphs (a) and (b); and
 - (ii) the 3.4 GHz frequency lots not assigned to other bidders would form a single block of numbered 3.4 GHz frequency lots.

Preparing a 3.4 GHz assignment stage option list for each bidder if the pre-existing licence holder does not bid for a replacement licence

67.—(1) Where the pre-existing licence holder does not bid for a replacement licence, a bidder’s 3.4 GHz assignment stage options shall be each of those 3.4 GHz frequency blocks which satisfy the following conditions—

- (a) the number of 3.4 GHz frequency lots contained in the 3.4 GHz frequency block is equal to the number of that bidder’s winning principal stage bids for 3.4 GHz frequency lots;
- (b) the numbered 3.4 GHz frequency lots contained in the 3.4 GHz frequency block together form a single block of numbered 3.4 GHz frequency lots; and
- (c) if that bidder were assigned the 3.4 GHz frequency lots contained in the 3.4 GHz frequency block the following conditions would be satisfied—

- (i) each other bidder could be assigned 3.4 GHz frequency lots contained in a 3.4 GHz frequency block that, in respect of that bidder's 3.4 GHz winning principal stage bids, satisfies the conditions in sub-paragraphs (a) and (b); and
- (ii) the 3.4 GHz frequency lots not assigned to other bidders are contained in at most two blocks of numbered 3.4 GHz frequency lots, whereby, in such case, one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.

(2) If there are no assignment stage options which satisfy the conditions set out in paragraph (1) above, then the bidder's assignment stage options shall be those which satisfy the following conditions—

- (a) the number of 3.4 GHz frequency lots contained in the 3.4 GHz frequency block or blocks is equal to the number of that bidder's winning principal stage bids for 3.4 GHz frequency lots;
- (b) where the bidder has won less than eight 3.4 GHz frequency lots, the numbered 3.4 GHz frequency lots contained in the 3.4 GHz frequency block together form a single block of numbered 3.4 GHz frequency lots;
- (c) where the bidder has won eight or more 3.4 GHz frequency lots, the numbered 3.4 GHz frequency lots are contained in at most two separate blocks of numbered 3.4 GHz frequency lots, whereby, in such case—
 - (i) one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range; and
 - (ii) the number of 3.4 GHz frequency lots contained in each of the two separate 3.4 GHz frequency blocks referred to in sub-paragraph (i) is at least four; and
- (d) if that bidder were assigned the 3.4 GHz frequency lots contained in the 3.4 GHz frequency block or blocks, the following conditions would be satisfied—
 - (i) each other bidder could be assigned frequencies corresponding to a 3.4 GHz frequency block or blocks that, in respect of that bidder's winning principal stage bids for 3.4 GHz frequency lots, satisfies the conditions in sub-paragraph (a), (b) and (c), each as applicable;
 - (ii) the number of separate 3.4 GHz frequency blocks assigned to all bidders considered together is no more than strictly necessary to meet the conditions set out in sub-paragraphs (a), (b), (c) and (d)(i); and
 - (iii) the 3.4 GHz frequency lots not assigned to other bidders are contained in at most two blocks of numbered 3.4 GHz frequency lots, whereby, in such case, one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.

(3) If there are no assignment stage options which satisfy the conditions set out in paragraph (2) above, then the bidder's assignment stage options shall be those which satisfy the following conditions—

- (a) the number of 3.4 GHz frequency lots contained in the 3.4 GHz frequency block or blocks is equal to the number of his winning principal stage bids for 3.4 GHz frequency lots;
- (b) the numbered 3.4 GHz frequency lots are contained in at most two separate blocks of numbered 3.4 GHz frequency lots, whereby, in such case, one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range; and
- (c) if that bidder were assigned the 3.4 GHz frequency lots contained in the 3.4 GHz frequency block or blocks, the following conditions would be satisfied—
 - (i) each other bidder could be assigned frequencies corresponding to a 3.4 GHz frequency block or blocks that, in respect of that bidder's winning principal stage bids for 3.4 GHz frequency lots, satisfies the condition in sub-paragraph (a) and (b);

- (ii) the number of separate 3.4 GHz frequency blocks assigned to all bidders considered together is no more than strictly necessary to meet the conditions set out in subparagraphs (a), (b) and (c)(i); and
- (iii) the 3.4 GHz frequency lots not assigned to other 3.4 GHz assignment stage bidders are contained in at most two blocks of numbered 3.4 GHz frequency lots, whereby, in such case, one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.

3.4 GHz Assignment stage bids

68.—(1) In order to make a valid 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the base price for that bidder's winning principal stage bids determined under regulation 31(d) (if any), for a licence that authorises the use of the frequencies corresponding to the block of numbered 3.4 GHz frequency lots that is the 3.4 GHz assignment stage option.

(2) A bidder may make no more than one 3.4 GHz assignment stage bid for each 3.4 GHz assignment stage option.

(3) A bidder is not required to make a 3.4 GHz assignment stage bid.

(4) Where a bidder does not make a valid 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option—

- (a) that bidder will be deemed to have made a 3.4 GHz assignment stage bid with a value of zero pounds for that 3.4 GHz assignment stage option; and
- (b) OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the bid is not a valid 3.4 GHz assignment stage bid.

Determination of the winning 3.4 GHz assignment stage bids

69.—(1) The winning 3.4 GHz assignment stage bids shall be those valid 3.4 GHz assignment stage bids that comprise the winning combination of valid 3.4 GHz assignment stage bids.

(2) The winning combination of valid 3.4 GHz assignment stage bids shall be the valid combination of 3.4 GHz assignment stage bids having the highest total value of amounts bid.

(3) Where there is more than one valid combination of 3.4 GHz assignment stage bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of 3.4 GHz assignment stage bids to determine the winning combination of 3.4 GHz assignment stage bids.

Valid combinations of assignment stage bids where the pre-existing licence holder bids for a replacement licence

70. Where the pre-existing licence holder bids for a replacement licence, a combination of valid 3.4 GHz assignment stage bids is a valid combination of 3.4 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.4 GHz assignment stage bid from each winning bidder eligible to bid under regulation 65;
- (b) each of those valid 3.4 GHz assignment stage bids is for a 3.4 GHz assignment stage option as determined by OFCOM for the bidder under regulation 66;
- (c) no numbered 3.4 GHz frequency lot is included in more than one of the 3.4 GHz assignment stage options included in the combination of valid 3.4 GHz assignment stage bids; and
- (d) the numbered 3.4 GHz frequency lots not included in that combination of valid assignment stage bids together form a single block of numbered 3.4 GHz frequency lots.

Valid combinations of assignment stage bids where the pre-existing licence holder does not bid for a replacement licence

71. Where the pre-existing licence holder does not bid for a replacement licence, a combination of valid 3.4 GHz assignment stage bids is a valid combination of 3.4 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.4 GHz assignment stage bid from each winning bidder eligible to bid under regulation 65;
- (b) each of those valid 3.4 GHz assignment stage bids is for a 3.4 GHz assignment stage option as determined by OFCOM for the bidder under regulation 67;
- (c) no numbered 3.4 GHz frequency lot is included in more than one of the 3.4 GHz assignment stage options included in the combination of valid 3.4 GHz assignment stage bids; and
- (d) the blocks of numbered 3.4 GHz frequency lots not included in that combination of valid assignment stage bids together form a single block of numbered 3.4 GHz frequency lots in the lower 3.4 GHz frequency range and a single block of numbered 3.4 GHz frequency lots in the upper 3.4 GHz frequency range.

Determination of 3.4 GHz additional prices

72. In respect of each winning 3.4 GHz assignment stage bid, OFCOM shall determine an amount in whole pounds (“3.4 GHz additional price”) which shall be payable by the relevant winning 3.4 assignment stage bidder in accordance with Schedule 7.

CHAPTER 10

Procedure and further deposit for assignment stage

Notice to bidders before the assignment stage round

73. Before the start of the assignment stage round, OFCOM shall notify each bidder that may make an assignment stage bid in the assignment stage round of—

- (a) the 2.3 GHz and 3.4 GHz assignment stage options that are available to that bidder in the assignment stage round as determined in accordance with regulations 61, 66 and 67, each as appropriate; and
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

Submission of assignment stage form to OFCOM

74.—(1) A bidder must submit the completed assignment stage form to OFCOM by using the electronic auction system, except as provided for in regulation 75.

(2) The completed assignment stage form must be received by OFCOM by the time notified to bidders under regulation 73(b) as the end of the assignment stage round.

Alternative method for submission of assignment stage form

75.—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the assignment stage form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Incomplete or defective assignment stage form

76.—(1) Where, due to the manner of completion, an assignment stage form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of assignment stage bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to the making of assignment stage bids.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, the assignment stage form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation—

- (a) where the incompleteness or defect relates to one or more of the assignment stage bids made on the assignment stage form, that assignment stage bid or those assignment stage bids (as the case may be) shall not be valid, and regulation 62(4) or regulation 68(4), each as appropriate, shall apply;
- (b) in all other cases, the assignment stage form in its entirety shall be rejected by OFCOM and none of the assignment stage bids made on that assignment stage form shall be valid, and regulation 58(5) shall apply.

Assignment stage bid deposit

77.—(1) The bidder is required to pay the final assignment stage deposit into OFCOM's bank account, with accompanying information which identifies the bidder, by 5pm on the working day following the date of the assignment stage round notified by OFCOM in accordance with regulation 73 (b).

(2) The final assignment stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is equal to the sum of—

- (a) the base price for that bidder's winning principal stage bids determined under regulation 31;
- (b) the final withdrawal liability; and
- (c) the amount which is the sum of—
 - (i) the bidder's highest 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option; and
 - (ii) the bidder's highest 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option.

(3) Where a bidder does not satisfy the requirements set out in paragraph (1), the bidder shall be deemed to have made a valid 2.3 GHz assignment stage bid of zero pounds for all 2.3 GHz assignment stage options, and a valid 3.4 GHz assignment stage bid of zero pounds for all 3.4 GHz assignment stage options.

Notification of results of the assignment stage

78. Following the determination of the winning assignment stage bids, and the determination of the additional price for each winning assignment stage bid, OFCOM shall notify each winning bidder of—

- (a) the 2.3 GHz and 3.4 GHz assignment stage options for which the bidder made winning assignment stage bids; and
- (b) the additional price for each winning assignment stage bid made by the bidder.

CHAPTER 11

Grant stage

Determination of the 2.3 GHz licence fee

79. Except for the pre-existing licence holder which bids for a replacement licence, the licence fee payable by a winning bidder for 2.3 GHz frequency lots shall be an amount equal to the total of—

- (a) the base price for such bidder's winning principal stage bids for 2.3 GHz frequency lots determined by OFCOM under regulation 31(b); and
- (b) the additional price for such bidder's winning 2.3 GHz assignment stage bid determined by OFCOM under regulation 64 (if any) .

Determination of the 3.4 GHz licence fee

80. Except for the pre-existing licence holder which bids for a replacement licence, the licence fee payable by a winning bidder for the 3.4 GHz frequency lots shall be an amount equal to the total of—

- (a) the base price for such bidder's winning principal stage bids for 3.4 GHz frequency lots determined by OFCOM under regulation 31(d); and
- (b) the additional price for such bidder's winning 3.4 GHz assignment stage bid determined by OFCOM under regulation 70 (if any).

Determination of licence fees payable by the pre-existing licence holder

81.—(1) The licence fees payable by the pre-existing licence holder which bids for a replacement licence shall be the licence fee for the replacement licence determined under paragraph (2), the licence fee for the 3.4 GHz licence for the additional 3.4 GHz frequency lots determined under paragraph (3)(if any) and the licence fee for the 2.3 GHz licence determined under paragraph (4)(if any).

(2) The licence fee for the replacement licence shall be—

- (a) where the pre-existing licence holder does not win any additional 3.4 GHz frequency lots in the principal stage, the amount which is equal to the additional price for its winning 3.4 GHz assignment stage bid determined by OFCOM under regulation 72 (if any); or
- (b) where the pre-existing licence holder wins additional 3.4 GHz frequency lots in the principal stage, zero pounds.

(3) The licence fee for the 3.4 GHz licence for the additional 3.4 GHz frequency lots shall be an amount equal to the total of—

- (i) the base price for the additional 3.4 GHz frequency lots, determined by OFCOM under regulation 31(d); and
- (ii) the additional price for its winning 3.4 GHz assignment stage bid for the replacement lots and the additional lots determined by OFCOM under regulation 72 (if any).

(4) The licence fee for the 2.3 GHz licence shall be an amount equal to the total of—

- (i) the base price for the pre-existing licence holder's winning principal stage bids for 2.3 GHz frequency lots determined by OFCOM under regulation 31(b); and
- (ii) the additional price for the pre-existing licence holder's winning 2.3 GHz assignment stage bid determined by OFCOM under regulation 64 (if any).

Procedure where the amount of a winning bidder's deposit is less than the licence fees

82.—(1) Where, after completion of the assignment stage, the total amount a winning bidder has on deposit at that time is an amount that is less than the sum determined in accordance with paragraph (2), the bidder must, by a deadline specified by OFCOM, pay into OFCOM's bank

account, with accompanying information which identifies the bidder, a sum in pounds calculated in accordance with paragraph (3).

- (2) The sum referred to in paragraph (1) is—
 - (a) except for the pre-existing licence holder which bids for a replacement licence, the amount which is the sum of the winning bidder's 2.3 GHz licence fee calculated in accordance with regulation 79 (if any), the winning bidder's 3.4 GHz licence fee calculated in accordance with regulation 80 (if any) and its final withdrawal liability (if any); or
 - (b) for the pre-existing licence holder which bids for a replacement licence, the amount which is the sum of the pre-existing licence holder's licence fees calculated in accordance with regulation 81 and its final withdrawal liability (if any).
- (3) The sum which the bidder must pay to OFCOM referred to in paragraph (1) shall be—
 - (a) except for the pre-existing licence holder which bids for a replacement licence, the difference between—
 - (i) the amount which is the sum referred to in paragraph (2)(a); and
 - (ii) the amount the bidder has on deposit; or
 - (b) for the pre-existing licence holder which bids for a replacement licence, the difference between—
 - (i) the amount which is the sum referred to in paragraph (2)(b); and
 - (ii) the amount the bidder has on deposit.
- (4) Where a bidder has paid such sum by the deadline, OFCOM shall grant—
 - (a) to the bidder which is not the pre-existing licence holder which bids for a replacement licence—
 - (i) a licence authorising the use of the frequencies corresponding to the 2.3 GHz assignment stage option for which the bidder made the winning 2.3 GHz assignment stage bids (if any); and
 - (ii) a licence authorising the use of the frequencies corresponding to the 3.4 GHz assignment stage option for which the bidder made the winning 3.4 GHz assignment stage bids (if any); and
 - (b) to the pre-existing licence holder which bids for a replacement licence—
 - (i) the replacement licence, authorising the use of the frequencies corresponding to the block of eight frequency lots which is the block which is at the top of the block of frequencies included in the 3.4 GHz assignment stage option for which the pre-existing licence holder made the winning 3.4 GHz assignment stage bid;
 - (ii) a licence authorising the use of the frequencies corresponding to the block of frequencies included in the 3.4 GHz assignment stage option for which the pre-existing licence holder made the winning 3.4 GHz assignment stage bid and which frequencies are not already included in the replacement licence referred to in subparagraph (3)(b)(i) above (if any); and
 - (iii) a licence authorising the use of the frequencies corresponding to the 2.3 GHz assignment stage option for which the bidder made the winning 2.3 GHz assignment stage bids (if any).
- (5) Where—
 - (a) a bidder has not paid such sum by the deadline; and
 - (b) the bidder is not the pre-existing licence holder which bids for a replacement licence,that bidder shall not be entitled to the grant of any licences under these Regulations and shall not receive a refund of any sum which the bidder has paid as a deposit under these Regulations which shall (where not already forfeited) be forfeited, together with any interest which has accrued on deposit.
- (6) Where—

- (a) a bidder has not paid such sum by the deadline; and
- (b) the bidder is the pre-existing licence holder which bids for a replacement licence, then—
 - (a) the pre-existing licence holder shall be entitled to the replacement licence, authorising the use of the frequencies corresponding to the block of eight frequency lots which is the block which is at the top of the block of frequencies included in the 3.4 GHz assignment stage option for which the pre-existing licence holder made the winning 3.4 GHz assignment stage bid; and
 - (b) the pre-existing licence holder shall not be entitled to any other licences, and shall not receive a refund of any sum which the pre-existing licence holder has paid as a deposit under these Regulations which shall (where not already forfeited) be forfeited, together with any interest which has accrued on deposit.

Procedure where the amount of a winning bidder’s deposit is greater than or equal to the licence fees

83.—(1) Where, after completion of the assignment stage, the total amount a winning bidder has on deposit at that time is an amount that is greater than or equal to the amount determined in accordance with regulation 82 (2), OFCOM shall—

- (a) grant to the winning bidder which is not the pre-existing licence holder which bids for a replacement licence—
 - (i) a licence authorising the use of the frequencies corresponding to the 2.3 GHz assignment stage option for which the bidder made the winning 2.3 GHz assignment stage bid (if any); and
 - (ii) a licence authorising the use of the frequencies corresponding to the 3.4 GHz assignment stage option for which the bidder made the winning 3.4 GHz assignment stage bid (if any);
 - (b) grant to the pre-existing licence holder which bids for a replacement licence—
 - (i) the replacement licence, authorising the use of the frequencies corresponding to the block of eight frequency lots which is the block which is at the top of the block of frequencies included in the 3.4 GHz assignment stage option for which the pre-existing licence holder made the winning 3.4 GHz assignment stage bid;
 - (ii) a licence authorising the use of the frequencies corresponding to the frequencies included in the 3.4 GHz assignment stage option for which the pre-existing licence holder made the winning 3.4 GHz assignment stage bid and which are not already included in the replacement licence under sub-paragraph (1)(b)(i) above (if any); and
 - (iii) a licence authorising the use of the frequencies corresponding to the 2.3 GHz assignment stage option for which the bidder made the winning 2.3 GHz assignment stage bids (if any); and
 - (c) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).
- (2) The sum which OFCOM shall refund to a winning bidder shall be—
- (a) for the winning bidder which is not the pre-existing licence holder which bids for a replacement licence, the difference (if any) between—
 - (i) the amount the winning bidder has on deposit; and
 - (ii) the amount which is the sum referred to in regulation 82 (2)(a);
 - (b) for the pre-existing licence holder which bids for a replacement licence, the difference (if any) between—
 - (i) the amount the pre-existing licence holder has on deposit; and
 - (ii) the amount which is the sum referred to in regulation 82 (2)(b).

Notification to bidders following the grant of licences

84. Following the grant of licences, OFCOM shall notify each winning bidder of the names of the persons to whom licences were granted, and, in relation to each of them—

- (a) details of the frequencies in respect of which the licences were granted; and
- (b) details of the licence fees paid, including a break-down of the base prices and the additional prices.

Completion of the award process

85. After the grant of licences, OFCOM shall complete the award process by publishing on their website—

- (a) the names of the persons to whom licences were granted, and, in relation to each of them—
 - (i) details of the frequencies in respect of which the licences were granted; and
 - (ii) details of the licence fees paid;
- (b) the names of any persons who did not meet the requirements of regulation 82(5) and (6), and, in relation to each of them—
 - (i) details of the frequencies in respect of which licences would have been granted; and
 - (ii) details of the licence fees which would have been payable for those licences had they been granted; and
- (c) details of all valid principal stage bids, all decisions to withdraw standing high bids, all decisions to use waiver and all valid assignment stage bids made by each bidder, and all default waivers used by OFCOM on behalf of a bidder.

PART 5

Activity rules

Forfeit of deposit and exclusion from award process

86. If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 88 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) any sum paid as a deposit under these Regulations shall be forfeited (together with any interest which has accrued on the deposit) by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded from the award process by OFCOM giving that applicant or bidder notice in writing.

Bids made by an excluded bidder

87.—(1) Where a bidder is excluded from the award process under regulation 86 during the principal stage, OFCOM shall determine whether it should disregard the bids made in any principal stage rounds prior to the exclusion, in order to have a fair and efficient outcome to the award process.

(2) Where OFCOM determine that it is appropriate to disregard the bids made in any principal stage rounds—

- (a) it shall notify bidders of the rounds for which it has determined to disregard the bids; and
- (b) resume the award process from the start of the principal stage round following the round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be

disregarded under that sub-paragraph, to rerun the award process from the start of the first principal stage round.

(3) Where a bidder is excluded from the award process under regulation 86 during the assignment stage, all of the assignment stage bids made by the bidder shall not be taken into consideration for the purposes of determining—

- (a) the winning assignment stage bids under regulations 63 and 69;
- (b) the additional price payable by a winning bidder under regulations 64 and 72.

Events

88. The events referred to in regulation 86, are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of that applicant's or bidder's bidder group;
 - (iii) to a provider of finance for the purpose of raising finance for a bid; or
 - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group; and
 - (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of—
 - (ii) a person ceasing to be a member of that bidder group;
 - (iii) a person joining that bidder group under the procedure in regulation 9(3); or
 - (iv) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

PART 6

MISCELLANEOUS

General power of exclusion

89. OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process, if required to do so by any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003^(a) or if, after OFCOM's determination under regulation 10(1) (and notwithstanding that determination), in their opinion the applicant or bidder is not a fit and proper person to hold a licence.

Notification to OFCOM

90. If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel who are specified by OFCOM for that purpose on OFCOM's website and must deliver that notice to OFCOM—

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1 9HA; or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their website.

Changes to timing or location

91.—(1) Subject to regulations 92 and 93, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations to be delivered at the place specified or by the deadline specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed by the deadline specified.

(2) Where this paragraph applies, OFCOM shall take reasonable steps to notify applicants or bidders that—

- (a) delivery must be made on a different day or within different times on that day or at a different place; and
- (b) the action must be completed on a different day or by a different deadline.

Changes to round times and use of electronic auction system

92.—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 4 of these Regulations, OFCOM shall take reasonable steps to notify bidders of an alternative method of participating in the award process

(a) 2003 c.21.

and any requirements relating to the authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the award process in accordance with a notification under paragraph (3).

Rerunning rounds

93.—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect on the continuation of the round).

(2) Where this paragraph applies, OFCOM shall—

- (a) take reasonable steps to notify bidders of its determination under paragraph (1);
- (b) disregard the bids made in that round; and
- (c) resume the award process from the end of the previous round.

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 4 of these Regulations because of technical failure (or an event or circumstance with similar effect on the continuation of the award process).

(4) Where this paragraph applies, OFCOM shall—

- (a) determine the rounds for which bids made in those rounds should be disregarded in order to have a fair and efficient outcome to the award process;
- (b) take reasonable steps to notify bidders of its determinations under paragraph (3) and sub-paragraph (a); and
- (c) resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to rerun the award process from the start of first principal stage round.

Refunds

94. OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations.

Deposits

95. In determining under these Regulations the amount that an applicant or bidder has on deposit OFCOM shall disregard any sum forfeited under these Regulations and any interest which may have accrued on any deposit.

SCHEDULE 1

Regulation 16

Frequency lots

In these Regulations—

- (a) “2.3 GHz frequency lot” means any of the four numbered 2.3 GHz frequency lots listed in Column (1) of Table 1 comprising the frequencies listed in the corresponding entry in Column (2) of the same table;
- (b) “3.4 GHz frequency lot” means any of the 3.4 GHz frequency lots listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table whereby—
 - (i) a reference to a 3.4 GHz frequency lot in chapters 2 to 6 of Part 4 (or otherwise referring to the principal stage) is a reference to any of the thirty 3.4 GHz frequency lots which are numbered one to fourteen and nineteen to thirty-four listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table; and
 - (ii) a reference to a 3.4 GHz frequency lot in chapters 7 to 11 of Part 4 (or otherwise referring to the assignment stage or the grant stage) is—
 - (aa) a reference to any of the thirty-eight 3.4 GHz frequency lots which are numbered one to thirty-eight listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table, if the pre-existing licence holder bids for a replacement licence; or
 - (bb) a reference to any of the thirty 3.4 GHz frequency lots which are numbered one to fourteen and nineteen to thirty-four listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table, if the pre-existing licence holder does not bid for a replacement licence.
- (c) “lot” means any lot which falls within one of the different lot categories in paragraphs (a) and (b);
- (d) a reference to “lot type” shall be construed as a reference to any one of the two different lot categories in paragraphs (a) and (b);
- (e) a reference to a numbered 2.3 GHz frequency lot or a numbered 3.4 GHz frequency lot means the lot with that number in Column (1) of Table 1 or Table 2 (as the case may be);
- (f) a reference to a “block” of numbered 2.3 GHz frequency lots or numbered 3.4 GHz frequency lots is to be construed as a reference to a block of sequentially numbered lots;
- (g) a reference to the “lower 3.4 GHz frequency range” shall be construed as a reference to the block of 3.4 GHz frequency lots numbered one to fourteen listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table; and
- (h) a reference to the “upper 3.4 GHz frequency range” shall be construed as a reference to the block of 3.4 GHz frequency lots numbered thirty-five to thirty-eight listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table.

Table 1

| <i>Column 1</i> | <i>Column 2</i> |
|-------------------------------|--------------------------|
| <i>2.3 GHz frequency lots</i> | <i>Frequencies (MHz)</i> |
| 2.3 GHz frequency lot 1 | 2350–2360 |
| 2.3 GHz frequency lot 2 | 2360–2370 |
| 2.3 GHz frequency lot 3 | 2370–2380 |
| 2.3 GHz frequency lot 4 | 2380–2390 |

Table 2

| <i>Column 1</i> | <i>Column 2</i> |
|-------------------------------|--------------------------|
| <i>3.4 GHz frequency lots</i> | <i>Frequencies (MHz)</i> |
| 3.4 GHz frequency lot 1 | 3410–3415 |
| 3.4 GHz frequency lot 2 | 3415–3420 |
| 3.4 GHz frequency lot 3 | 3420–3425 |
| 3.4 GHz frequency lot 4 | 3425–3430 |
| 3.4 GHz frequency lot 5 | 3430–3435 |
| 3.4 GHz frequency lot 6 | 3435–3440 |
| 3.4 GHz frequency lot 7 | 3440–3445 |
| 3.4 GHz frequency lot 8 | 3445–3450 |
| 3.4 GHz frequency lot 9 | 3450–3455 |
| 3.4 GHz frequency lot 10 | 3455–3460 |
| 3.4 GHz frequency lot 11 | 3460–3465 |
| 3.4 GHz frequency lot 12 | 3465–3470 |
| 3.4 GHz frequency lot 13 | 3470–3475 |
| 3.4 GHz frequency lot 14 | 3475–3480 |
| 3.4 GHz frequency lot 15 | 3480–3485 |
| 3.4 GHz frequency lot 16 | 3485–3490 |
| 3.4 GHz frequency lot 17 | 3490–3495 |
| 3.4 GHz frequency lot 18 | 3495–3500 |
| 3.4 GHz frequency lot 19 | 3500–3505 |
| 3.4 GHz frequency lot 20 | 3505–3510 |
| 3.4 GHz frequency lot 21 | 3510–3515 |
| 3.4 GHz frequency lot 22 | 3515–3520 |
| 3.4 GHz frequency lot 23 | 3520–3525 |
| 3.4 GHz frequency lot 24 | 3525–3530 |
| 3.4 GHz frequency lot 25 | 3530–3535 |
| 3.4 GHz frequency lot 26 | 3535–3540 |
| 3.4 GHz frequency lot 27 | 3540–3545 |
| 3.4 GHz frequency lot 28 | 3545–3550 |
| 3.4 GHz frequency lot 29 | 3550–3555 |
| 3.4 GHz frequency lot 30 | 3555–3560 |
| 3.4 GHz frequency lot 31 | 3560–3565 |
| 3.4 GHz frequency lot 32 | 3565–3570 |
| 3.4 GHz frequency lot 33 | 3570–3575 |
| 3.4 GHz frequency lot 34 | 3575–3580 |
| 3.4 GHz frequency lot 35 | 3580–3585 |
| 3.4 GHz frequency lot 36 | 3585–3590 |
| 3.4 GHz frequency lot 37 | 3590–3595 |
| 3.4 GHz frequency lot 38 | 3595–3600 |

SCHEDULE 2

Regulation 4

Application form and warranty

1. Details of the applicant

Provide the following details for the applicant—

Applicant's full name

Registered number of company

Registered office of company

Bank sort code and account number

Name of individual contact within applicant

Contact address (if different from registered office)

Contact telephone number

Contact mobile telephone number

Contact fax number

Contact electronic mail address

2. Authorised persons

Provide details of the name and position in the applicant of at least three and no more than five persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

3. Directors or members of managing body

Provide the name and job title of each of the directors of the applicant or each of the members of the managing body of the applicant.

4. Applicant group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) Regulations 2012 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the applicant group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 5 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 9 of the Regulations—

- (a) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (b) state whether any member of the applicant's applicant group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;
- (c) state whether any member of the applicant's applicant group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;

- (d) state whether any member of the applicant’s applicant group, or any person to whom confidential information has been disclosed, has disclosed confidential information, whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure—
 - (i) was to a member of the applicant’s applicant group; or
 - (ii) was to OFCOM;
- (e) state whether any member of the applicant’s applicant group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (f) state whether any member of the applicant’s applicant group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process and provide a description of the services concerned; and
- (g) state whether (and provide a description of any circumstances in which) any person who is a member or a director or employee of a member of the applicant’s applicant group and also a director or employee of a member of another applicant group is—
 - (i) taking part in the preparation of both applicant groups for participation in the award process; or
 - (ii) receiving confidential information relating to both applicant groups.

6. Other information

Provide a brief description of the substance of—

- (a) agreements (if any) relating to the management of the applicant; and
- (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its applicant group or its directors or officers.

7. Warranty

Provide the following warranty—

“[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that—

- (a) the persons authorised in section 2 of this application have read and understood the Regulations, the terms of the licence to be granted under the Regulations, and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 86 and 88 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.”

SCHEDULE 3

Regulation 4

Document for member of applicant's applicant group or bidder group who is not an associate

[Insert name of applicant or bidder] (the "applicant/bidder") wishes to include [insert name and address of person to be included in applicant or bidder group who is not an associate] as a member of the applicant/bidder's applicant or bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2015 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 10 of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant's bidder group. Regulations 86 and 88 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

Applicant/bidder

In relation to regulations 10, 86 and 88 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications ("OFCOM") that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in applicant or bidder group who is not an associate] is not a member of any other applicant's or bidder's applicant or bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in applicant or bidder group who is not an associate]—

- (a) has ever been or becomes a member of any other applicant's or bidder's applicant or bidder group;
- (b) has ever been or becomes a subsidiary of a member of any other applicant's or bidder's applicant or bidder group during the award process; or
- (c) has ever obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

[Insert name of person to be included in applicant or bidder group who is not an associate]

[Insert name of person to be included in applicant or bidder group who is not an associate] represents and warrants to OFCOM that it—

- (a) consents to be a member of the applicant/bidder's applicant or bidder group;
- (b) is not a member of any other applicant's or bidder's applicant or bidder group; and
- (c) is aware of the provisions in regulations 86 and 88 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder applicant or group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder—

- (a) if it has ever been or becomes a member of any other applicant's or bidder's applicant or bidder group;
- (b) if it has ever been or becomes a subsidiary of a member of any other applicant's or bidder's applicant or bidder group during the award process; or
- (c) if it has ever obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

SCHEDULE 4

Regulation 4

3.4 GHz minimum requirement

Under regulation 4 of the Wireless Telegraphy (Licence Award) Regulations 2015, the applicant may inform OFCOM that it requires a minimum number of 3.4 GHz frequency lots. That minimum requirement may not be more than four lots. Where the applicant informs OFCOM of such minimum requirement, that bidder shall be a winning principal stage bidder for either none or at least the number of 3.4 GHz frequency lots it requires.

[Insert name of applicant or bidder] (the “applicant/bidder”) hereby informs OFCOM that its 3.4 GHz minimum requirement amounts to—

none

two

three

four

3.4 GHz frequency lots [delete as appropriate].

The applicant/bidder acknowledges that its specification of its 3.4 GHz minimum requirement is irrevocable and cannot be amended.

[signed]

SCHEDULE 5

Regulation 5

Declaration to be made by each of the pre-existing licence holders

UK Broadband Limited and UKB Networks Limited hereby commit to the surrender of the pre-existing licence, as defined in The Wireless Telegraphy (Licence Award) Regulations 2015 (the “Regulations”), upon OFCOM granting a replacement licence, as defined in the Regulations, for a block of eight 3.4 GHz frequency lots to [UK Broadband Limited or UKB Networks Limited][delete as appropriate] in accordance with the Regulations.

[signed by UK Broadband Limited]

[signed by UKB Networks Limited]

SCHEDULE 6

Regulation 64

Determination of 2.3 GHz additional price

Additional price

1.—(1) OFCOM shall determine an additional price for each winning assignment stage bid for numbered 2.3 GHz frequency lots by imposition of the requirements that the additional prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where an additional price so determined includes a fraction of a pound, the additional price shall be that price rounded up to the nearest whole pound.

First requirement

2. The additional price for each winning assignment stage bid for numbered 2.3 GHz frequency lots shall be no less than zero and no more than the amount of that winning assignment stage bid.

Second requirement

3.—(1) Taking the additional prices for the winning assignment stage bids for numbered 2.3 GHz frequency lots together, the additional prices shall be such that if—

- (a) the amount bid by each winning bidder for the assignment stage option selected in its winning assignment stage bid for numbered 2.3 GHz frequency lots had been the additional price rather than the amount of its winning assignment stage bid (“2.3 GHz reduced winning assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid assignment stage bid for numbered 2.3 GHz frequency lots made by that bidder had been reduced by an amount equal to the difference between the amount of its winning assignment stage bid for numbered 2.3 GHz frequency lots and the additional price for that relevant winning assignment stage bid,

the combination of the 2.3 GHz reduced winning assignment stage bids submitted by the winning bidders would have been the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for numbered 2.3 GHz frequency lots having the highest total value of amounts bid.

(2) Where the amount of a bid has been reduced in accordance with sub-paragraph (1)(b) and is less than zero, the amount of that bid shall be treated as if it were zero for the purposes of this paragraph.

(3) The bids mentioned in sub-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid assignment stage bids for the purposes of this paragraph.

Third requirement

4. Taking the additional prices for the winning assignment stage bids for numbered 2.3 GHz frequency lots together, the total of those additional prices shall be no greater than the total of any other prices for the winning assignment stage bids for numbered 2.3 GHz frequency lots that satisfy the requirements set out in paragraphs 2 and 3.

Fourth requirement

5.—(1) Taking the additional prices for the winning assignment stage bids for numbered 2.3 GHz frequency lots together, the opportunity cost variance of those additional prices calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance, calculated in accordance with sub-paragraph (2), of any other prices for the winning assignment stage bids for numbered 2.3 GHz frequency lots that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“ OCV_A ”) of prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_A = \sum (p_A - c_A)^2$$

where—

- (a) “ p_A ” is the price for a winning assignment stage bid; and
- (b) “ c_A ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning assignment stage bid.
- (3) The formula is—

$$c_A = u_A - t_A + b_A$$

where—

- (a) “ u_A ” is the amount calculated in accordance with sub-paragraph (4);
 - (b) “ t_A ” is the total amount of the winning assignment stage bids for numbered 2.3 GHz frequency lots; and
 - (c) “ b_A ” is the amount of the winning assignment stage bid for which p_A is the price.
- (4) 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.
- (5) Where the amount of an assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that assignment stage bid shall be treated as a valid assignment stage bid for the purposes of that sub-paragraph.

Interpretation

6. In this Schedule “valid combination of assignment stage bids” shall be construed in accordance with regulation 63.

SCHEDULE 7

Regulation 72

Determination of 3.4 GHz additional price

Additional price

1.—(1) OFCOM shall determine an additional price for each winning assignment stage bid for numbered 3.4 GHz frequency lots by imposition of the requirements that the additional prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where an additional price so determined includes a fraction of a pound, the additional price shall be that price rounded up to the nearest whole pound.

First requirement

2. The additional price for each winning assignment stage bid for numbered 3.4 GHz frequency lots shall be no less than zero and no more than the amount of that winning assignment stage bid.

Second requirement

3.—(1) Taking the additional prices for the winning assignment stage bids for numbered 3.4 GHz frequency lots together, the additional prices shall be such that if—

- (a) the amount bid by each winning bidder for the assignment stage option selected in its winning assignment stage bid for numbered 3.4 GHz frequency lots had been the additional price rather than the amount of its winning assignment stage bid (“3.4 GHz reduced winning assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid assignment stage bid for numbered 3.4 GHz frequency lots made by that bidder had been reduced by an amount equal to the difference between the amount of its winning assignment stage bid for numbered 3.4 GHz frequency lots and the additional price for that relevant winning assignment stage bid,

the combination of the 3.4 GHz reduced winning assignment stage bids submitted by the winning bidders would have been the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for numbered 3.4 GHz frequency lots having the highest total value of amounts bid.

(2) Where the amount of a bid has been reduced in accordance with sub-paragraph (1)(b) and is less than zero, the amount of that bid shall be treated as if it were zero for the purposes of this paragraph.

(3) The bids mentioned in sub-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid assignment stage bids for the purposes of this paragraph.

Third requirement

4. Taking the additional prices for the winning assignment stage bids for numbered 3.4 GHz frequency lots together, the total of those additional prices shall be no greater than the total of any other prices for the winning assignment stage bids for numbered 3.4 GHz frequency lots that satisfy the requirements set out in paragraphs 2 and 3.

Fourth requirement

5.—(1) Taking the additional prices for the winning assignment stage bids for numbered 3.4 GHz frequency lots together, the opportunity cost variance of those additional prices calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance, calculated in accordance with sub-paragraph (2), of any other prices for the winning assignment stage bids for numbered 3.4 GHz frequency lots that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“ OCV_A ”) of prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_A = \sum (p_A - c_A)^2$$

where—

- (a) “ p_A ” is the price for a winning assignment stage bid; and
 - (b) “ c_A ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning assignment stage bid.
- (3) The formula is—

$$c_A = u_A - t_A + b_A$$

where—

- (a) “ u_A ” is the amount calculated in accordance with sub-paragraph (4);
- (b) “ t_A ” is the total amount of the winning assignment stage bids for numbered 2.3 GHz frequency lots; and
- (c) “ b_A ” is the amount of the winning assignment stage bid for which p_A is the price.

(4) 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.

(5) Where the amount of an assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that assignment stage bid shall be treated as a valid assignment stage bid for the purposes of that sub-paragraph.

Interpretation

6. In this Schedule “valid combination of assignment stage bids” shall be construed in accordance with regulation 69.