



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: 11 July 2017
Closing date for responses: 14 August 2017

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 policy decisions set out in statements published on 26 May 2015 and 26 October 2015, as modified by the decisions included in 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 was first 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 26 October 2015.² We subsequently published a further Consultation on 21 November 2016 (the "November 2016 Consultation") which set out proposals on outstanding competition issues and changes to the auction regulations.³
- 1.3 An initial Notice of our proposal to make regulations in connection with the award of spectrum in the 2.3 and 3.4 GHz bands was published alongside the October 2015 statement. We published an updated Notice to reflect the proposals in our November 2016 Consultation. These previous Notices included draft auction regulations.
- 1.4 This Notice presents a further revised draft of the proposed Wireless Telegraphy (Licence Award) Regulations 2017 ("Regulations"), in light of stakeholder responses to our November 2016 Consultation. We have published alongside this document a Statement which explains our reasoning behind the changes to the draft Regulations.⁴
- 1.5 We are asking stakeholders to comment on the key changes we are proposing to these draft Regulations, which are summarised in paragraph 2.5. We also invite any other comments relating to the general drafting of the proposed Regulations.

Proposed licence award regulations

- 1.6 Ofcom has the statutory power under sections 14 and 122(7) of the 2006 Act to make regulations to award licences by means of an auction.
- 1.7 Ofcom proposes to make regulations to allow for an auction of rights of use of radio frequencies (in wireless telegraphy licences) to be held.
- 1.8 The structure of this document is as follows:
 - 1.8.1 Section 2 sets out the general effect of the proposed draft Regulations. This includes an explanation of our proposed approach to implement the overall spectrum cap in the Regulations;

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/>

³ <https://www.ofcom.org.uk/consultations-and-statements/category-1/award-of-the-spectrum-bands>

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf

1.8.2 Annex 5 presents a draft of the proposed Regulations.

Comments or representations

1.9 Comments or representations with regard to the proposed Regulations are invited by **14 August 2017**. 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

or submitted using the online web form at:

<https://www.ofcom.org.uk/consultations-and-statements/category-3/notice-of-proposal-to-make-regulations-in-connection-with-the-award-of-2.3-ghz-and-3.4-ghz-spectrum>

Telephone inquiries to: 020 7783 4375

1.10 Following completion of this consultation process, Ofcom intends to make the final Regulations as soon as practicable.

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 pssr.award@ofcom.org.uk

1.11 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 2017

The legislative framework

- 2.1 Under the section 14 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 In this document, Ofcom is giving a further notice of its proposal to make regulations in relation to the award of frequencies in the 2.3 GHz and 3.4 GHz band. We are publishing this document alongside a Statement which sets our policy decisions with regards to auction design and competition measures (the "July 2017 Statement").⁵
- 2.3 A draft of the Regulations is set out at Annex 5.⁶
- 2.4 Ofcom previously notified, in October 2015 and in November 2016, proposals to make Regulations in relation to the award of these frequency bands. We have noted the main changes we are now proposing to make to the Regulations to reflect the policy decisions set out in our July 2017 Statement which accompanies this Notice. In annex 5, we have also highlighted in green the main amendments to the draft Regulations.
- 2.5 However, by way of a summary, the key changes to the proposed Regulations (as against the November 2016 version) are as follows:
 - 2.5.1 As detailed in our July 2017 Statement, we have included an overall bid constraint to give effect to our decision to impose an overall spectrum cap of 340 MHz on the amount of spectrum that any operator can hold following the award which we expect to be useable within similar timeframes to the 3.4 GHz band. This overall bid constraint for each bidder will apply in every principal stage round. The detailed implementation of this constraint means that the sum of bids (both new bids made in the round and standing high bids assigned at the end of the most recent round that are not superseded by new bids) needs to be equal to or less than the overall bid constraint that applies to each bidder.
 - 2.5.2 We have amended a detail on the regulation relating to deposits during the principal stage, whereby we may require a bidder to top up its deposit to the level of its highest financial exposure from any previous round in the auction.

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf

⁶ For a copy of the draft Regulations, with all changes tracked as against the version published by Ofcom in November 2016, please contact Ofcom's PSSR team by telephone (020 7783 4375) or email (pssr.award@ofcom.org.uk)

- 2.5.3 We have replaced the name of the pre-existing licence holder in the 3.4 GHz band. Currently, this is formally UK Broadband Limited.
- 2.5.4 To provide certainty to bidders, we have also added a regulation to clarify how the award process would proceed in the unlikely event that the pre-existing licence holder were to be excluded. This applies only to the pre-existing licence holder, to which specific rules already apply in relation to bids it may make. This was a matter within Ofcom's discretion under our previous proposed draft of the Regulations.

The proposed Regulations

- 2.6 The proposed Regulations set out the procedure and rules that will apply for the award of wireless telegraphy licences to operate within specified frequencies.
- 2.7 The proposed process involves several stages. These are:
 - 2.7.1 the application stage, in which applicants can apply to Ofcom to take part in the award process (regulations 3-7);
 - 2.7.2 the qualification stage, in which Ofcom decides which applicants are qualified to participate in the award process, records their existing spectrum holdings and calculates the amount of bids for 2.3 GHz lots that they may make (regulations 8-21);
 - 2.7.3 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 25-64);
 - 2.7.4 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 65-90); and
 - 2.7.5 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 91-111).
- 2.8 The proposed Regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process (regulations 112-115).
- 2.9 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

- 2.10 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

- 2.11 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

- 2.12 The frequencies which are available in the award process are set out in Schedule 1 to the proposed Regulations. This Schedule is entitled "Lots".
- 2.13 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.
- 2.14 The different types of lots which are available in the award process are:
- 2.14.1 2.3 GHz frequency lots; and
 - 2.14.2 3.4 GHz frequency lots.
- 2.15 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.
- 2.16 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 the pre-existing licence holder applies for a replacement licence and qualifies to participate in the award (see paragraph 2.25), bidders will be able to bid for all frequencies within the frequency range 3410-3600 MHz, including those currently licensed to the pre-existing licence holder. If the pre-existing licence holder 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

- 2.17 The Application Stage is described in detail at Part 2 of the proposed Regulations.
- 2.18 The application requirements include the submission of:
- 2.18.1 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. If they so choose, applicants are entitled to specify in this application form that they wish to win a minimum number of 3.4 GHz lots (two, three or four). This is known as the 3.4 GHz minimum requirement and is discussed in more detail below;
 - 2.18.2 a document for each person who is not an associate of the applicant, but whom the applicant wishes to join its applicant group, signed by that person and two authorised persons on behalf of the applicant;
 - 2.18.3 a document setting out details of the existing spectrum holdings of the applicant and various related parties; and
 - 2.18.4 an initial deposit of £100,000.
- 2.19 The document mentioned at paragraph 2.18.2 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 and forfeiture of deposits.

- 2.20 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.
- 2.21 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 that are not associates of the applicant (and in relation to which the applicant has submitted the document mentioned at paragraph 2.18.2).
- 2.22 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 in the event that, at the end of the final principal stage round, it holds a number of standing high bids which is smaller than its minimum requirement. One exception to this is if a bidder withdraws the standing high bid status of some of its bids for 3.4 GHz lots in the principal stage and, as a result, some or all lots are unallocated at the end of the principal stage. Standing high bids and the withdrawal of standing high bid status is explained later in this section, when we discuss the principal stage.
- 2.23 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).
- 2.24 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.
- 2.25 The Application Stage also explains that the pre-existing licence holder, who is the licence holder 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 in the assignment stage (as further explained below).

Qualification Stage

- 2.26 The Qualification Stage is described in detail at Part 3 of the proposed Regulations.
- 2.27 Following the date for receipt of applications, Ofcom will notify each applicant of the names and associates of each other applicant.
- 2.28 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.
- 2.29 In parallel with this exercise, Ofcom will also consider whether any members of one applicant group are also members of another applicant group.

- 2.30 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).
- 2.31 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.
- 2.32 Ofcom then considers whether each applicant is qualified to participate in the award process.
- 2.33 Each applicant considered fit to hold a licence (in accordance with the provisions of regulation 12) and not having an overlap in its applicant group with another applicant, will qualify to participate in the award process.
- 2.33.1 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.
- 2.33.2 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.
- 2.34 Ofcom will notify each applicant whether it has qualified to bid in the award process, including the reasons an applicant has not qualified.
- 2.35 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, they will be excluded from the award process and, unless the initial deposit has been forfeited in accordance with the Regulations (for example for breach of the activity rules), their initial deposit will be refunded.
- 2.36 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.
- 2.37 After the last day for withdrawal, Ofcom will determine and publish the number and names of bidders. Ofcom will also announce whether the pre-existing licence holder applied for a replacement licence.

Eligibility and deposit before the first round of the principal stage

- 2.38 Before the principal stage commences, bidders can pay an additional deposit (regulation 17) which will be taken into account by Ofcom in accordance with

regulation 18 for calculating the bidder's eligibility limit for the first principal stage round.

- 2.39 The concept of an "eligibility limit" is used in the proposed Regulations to determine how many lots a bidder may bid for (regulations 49 to 52). This is a separate concept from the 2.3 GHz bid limit and overall bid constraint which is discussed below. During the principal stage rounds, the eligibility points used by a bidder must not exceed the bidder's eligibility limit.
- 2.40 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.
- 2.41 If the number which results is less than one, that bidder is excluded from the award process, and any sums provided to Ofcom as a deposit will be forfeited (together with any interest on that deposit).

Determination of the bid limit for 2.3 GHz frequencies and the proposed overall bid constraint

- 2.42 Following Ofcom's November 2016 Consultation and our review of stakeholder responses, we have now decided to impose an overall spectrum cap. This overall spectrum cap is in addition to the 2.3 GHz specific cap which we consulted on in our previous Notice. Our July 2017 Statement explains why we think it is appropriate and proportionate to impose this overall spectrum cap and the 2.3 GHz specific cap.⁷
- 2.43 Ofcom will record the existing spectrum holdings of each bidder after the deadline for additional deposits has passed (regulation 19 and Schedules 7 and 8). Ofcom will then determine, on the basis of the recorded spectrum holdings:
- 2.43.1 the maximum number of bids for 2.3 GHz lots, if any, each bidder may make for during the principal stage (regulation 20); and
- 2.43.2 the overall bid constraint that will apply for each bidder (regulation 21),
- 2.44 We note that the existing spectrum holdings of a number of persons associated with a bidder are relevant when recording that bidder's spectrum holdings (regulation 4(3)(a)(iii)). These persons may be different to those persons that are in a bidder's group.
- 2.45 In the proposed Regulations, we refer to the maximum number of bids for 2.3 GHz lots each bidder can make as that bidder's "2.3 GHz bid limit". The effect of the 2.3 GHz bid limit is that a bidder's post-award spectrum holdings cannot exceed 255 MHz of mobile spectrum that is useable immediately after the award.⁸

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf

⁸ The proposed regulations do not explicitly refer to a cap of 255 MHz. Rather, as each 2.3 GHz lot is for 10 MHz of spectrum, the proposed spectrum cap provides that a bidder which already has *more than* 245 MHz of existing immediately useable mobile spectrum will have a zero 2.3 GHz bid limit and will therefore be unable to bid for any 2.3 GHz lots (regulation 20(2)(a)). This concept is also used when calculating 2.3 GHz bid limits of one, two, three and four (regulation 20(2)(b) to (e)).

- 2.46 A bidder's "overall bid constraint" is the limit that will apply on the total frequencies associated with that bidder's selection on its principal stage form. The effect of the overall bid constraint is to ensure that a bidder's post award spectrum holdings cannot exceed 340 MHz of the radio frequencies which we expect to be useable within a similar timeframe as the 3.4 GHz band. We explain how we are proposing to implement this overall bid constraint in the Regulations in paragraphs 2.60-2.69 below.
- 2.47 As with previous spectrum awards, a bidder's 2.3 GHz bid limit and overall bid constraint will remain the same throughout the principal stage. This means that, once a bidder's existing spectrum holdings have been recorded, any divestment of spectrum by that bidder (or associated parties) will not lead to any amendment of that bidder's recorded spectrum holdings, nor to its 2.3 GHz bid limit or overall bid constraint. Conversely, where a bidder's existing spectrum holdings are increased after the recording of spectrum holdings, that bidder risks exclusion from the award process and forfeiture of its deposit by Ofcom under the Activity Rules (regulations 112 and 115).

Participation by the pre-existing licence holder

- 2.48 Part 5 of the proposed Regulations explains what happens if the pre-existing licence holder applies for a replacement licence, qualifies to participate in the award (and is therefore a bidder), and is not otherwise excluded. In such a case, while only thirty 3.4 GHz frequency lots are available in the principal stage, the pre-existing licence holder will automatically win a further eight 3.4 GHz lots (regulations 23 and 24). As a result, 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 the pre-existing licence holder.
- 2.49 If the pre-existing licence holder 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 2.3 GHz lots and additional 3.4 GHz frequencies, the latter of which will be included in the 3.4 GHz assignment stage options it will bid for.

The principal stage, including proposed regulations relating to the "2.3 GHz bid limit" and "overall bid constraint"

- 2.50 The principal stage is described in detail in Part 6 of the proposed Regulations.
- 2.51 The principal stage consists of one or more principal stage rounds.
- 2.52 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 the standing high bid status of bids for lots of either type that it has made in previous principal stage rounds, and whether it wishes to request that its eligibility limit be carried forward to the next round.
- 2.53 A principal stage bid is a bid for a single 2.3 GHz frequency lot or a single 3.4 GHz frequency lot.

- 2.54 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 request that its eligibility limit be carried forward in the first principal stage round.
- 2.55 In any principal stage round, as set out in regulation 43, the number of bids for 2.3 GHz lots that a bidder may make shall not exceed the bidder's 2.3 GHz bid limit (which shall be a number between zero and four, depending on its recorded spectrum holdings).
- 2.56 Similarly, as set out in the newly proposed regulation 44, the total frequencies associated with a bidder's principal stage form must not exceed the bidder's overall bid constraint. This means that that the sum of (a) a bidder's new bids in the round and (b) that bidder's standing high bids assigned at the end of the previous round for any lot types it has not submitted new bids for, must less than or equal to that bidder's overall bid constraint. See paragraphs 2.60-2.69 for more detail about the proposed implementation of the overall bid constraint rule.
- 2.57 For the first principal stage round, the prices for each of the two types of lot are set out in regulation 29.
- 2.58 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 round prices by Ofcom is set out in regulation 30.
- 2.59 The principal stage rounds continue one after another until there is a round where:
- 2.59.1 no bids are submitted by any bidders;
 - 2.59.2 no bidders withdraw the standing high bid status of bids made by them in previous rounds; and
 - 2.59.3 no bidder requests that its eligibility limit is carried forward to the next round or benefits from its eligibility limit being automatically carried forward to the next round by Ofcom.

Proposed implementation of the overall bid constraint

- 2.60 As noted above, we have now decided to impose an overall spectrum cap of 340 MHz on the total amount of spectrum any bidder can hold at the end of the award process that we expect to be useable within the same timeframes as the 3.4 GHz band. Our policy decision on this issue is set out in our July 2017 Statement, published alongside this Notice. In this sub-section we set out how we intend to implement this cap in the Regulations in the form of an overall bid constraint.
- 2.61 The effect of the overall bid constraint will be to preclude round results where bidders are provisionally winning an amount of spectrum that would allow them to breach the overall cap of 340 MHz. This is necessary because the quantity of spectrum won by each individual bidder is determined at the end of the last round of the principal stage. In turn, the outcome of any principal stage round can potentially become the final outcome of the principal stage.

2.62 The rule we propose in regulation 44 of the draft Regulations to implement the overall bid constraint is as follows:

In any principal stage round, the sum of:

- new bids made by a bidder for 2.3 GHz and 3.4 GHz lot types in the current round, measured in MHz; and
- bids with standing high bid status assigned at the end of the most recent round, measured in MHz, in the lot types where the bidder did not submit new bids

cannot exceed the overall bid constraint applicable to the bidder.

2.63 Our proposed rule needs to take into account new bids and bids with standing high bid status assigned at end of the most recent round (if not superseded by new bids), because all of these can result in the bidder provisionally winning spectrum at the end of the round. Specifically:

2.63.1 New bids can become provisionally winning bids at the end of the round if they are assigned standing high bid status;

2.63.2 Bids with standing high bid status assigned at the end of the most recent round (that are not replaced by new bids made by the bidder) can also result in the bidder winning spectrum. This is because –

- a) the bidder may maintain the standing high bids, in which case these bids may again be assigned standing high bid status at the end of the current round;
- b) alternatively, it may withdraw the standing high bids, in which case it will be provisionally winning its withdrawn lots at the end of the current round if Ofcom is unable to assign standing high bid status on all the lots of that lot type.

Proposed approach to provisionally winning withdrawn bids in the overall bid constraint

2.64 We note that the proposed rule does not explicitly take into account any provisionally winning withdrawn bids at the end of the most recent round. These are lots which the bidder is provisionally winning as a result of a withdrawal from a *previous* round. If these lots remain unallocated at the end of the principal stage, the bidder who withdrew may win them.

2.65 The overall bid constraint rule does not need to take these provisionally winning withdrawn bids from previous rounds into account explicitly. This is because of the combination of the fact that there are only two lot types available in the auction, and the eligibility rule (regulation 49). As a result of this combination, a bidder *who is still liable* for winning withdrawn bids cannot expand its demand measured in MHz

compared to the round where the bidder initially withdrew.⁹ To see why and what the implications of this are, we illustrate with the following example.

2.66 Consider a round R in which the bidder withdraws¹⁰ from lot type i, and submits bids in the other lot type (lot type ii)¹¹. Let us also suppose this is the first time the bidder is withdrawing in the principal stage. The sum of the withdrawals and new bids in round R, measured in MHz, must be less than or equal to the overall bid constraint under the proposed rule set out above.

2.67 This is because under the existing auction rules, a bidder can only withdraw in the current round the status of bids that were assigned standing high bid status at the end of the previous round (and if it does so, it has to withdraw all of its standing high bids). Therefore, the sum of the bids for which status was withdrawn and new bids is equal to the sum of the standing high bids assigned at the end of the most recent round and the new bids made in the round. Formally:

$$(shb_i + b_{ii}) = (w_i + b_{ii}) \leq OBC$$

where shb_i stands for the bids for lot type i that were assigned standing high bid status at the end of the round preceding round R, w_i stands for the number of withdrawn bids in lot type i in round R, b_{ii} stands for the number of bids made in lot type ii in round R, and OBC stands for the bidder's overall bid constraint. The four units are measured in MHz.

2.68 If the bidder does not make new bids for lot type i lots in any round after round R, it will always remain under or at the overall bid constraint. This is because it cannot bid in lot type ii for more than b_{ii} due to the eligibility limit¹², and it will be provisionally winning at most w_i , which is the amount of withdrawn bids. Because we know that $w_i + b_{ii} \leq OBC$, the bidder must therefore be satisfying the overall bid constraint.

2.69 If instead in a later round (round R+X) the bidder bids for type i lots, one of two things may happen at the end of round R+X:

2.69.1 The bidder is still provisionally winning withdrawn bids in lot type i. In that case, its new bids in lot type i will have cancelled an equal number of winning withdrawn bids. This is because each new bid will reduce the amount of spectrum that would otherwise have remained unallocated. In total, the bidder cannot be provisionally winning¹³ more lots of lot type i than the number of bids it originally withdrew (w_i)¹⁴. Also, the bidder cannot bid on more than b_{ii} ¹⁵ in lot type ii due to the eligibility rule. Therefore, at the

⁹ In other words, it cannot submit a bid that could result in it becoming provisionally winning bidder on more spectrum than the round in which it first withdrew.

¹⁰ Under the auction rules, only partial standing high bidders can withdraw their bids. There can be at most one partial standing high bidder in each lot type in a round.

¹¹ Note that bidders cannot under the rules withdraw and make new bids in the same lot type in the same round.

¹² Or, if it withdraws its standing high bids in lot type ii, it cannot withdraw more than the bids made, that is, at most b_{ii}

¹³ This is the sum of standing high bids and provisionally winning withdrawn bids

¹⁴ Note that the assumption in this paragraph is that the bidder is still provisionally winning withdrawn bids in lot type i at the end of round R+X. Therefore, the bidder cannot during round R+X have bid for more than the number of withdrawn bids it was provisionally winning at the end of the previous round, because otherwise it would no longer be winning any withdrawn bids at the end of round R+X.

¹⁵ Or, alternatively, if the bidder chose to withdraw from lot type ii, it cannot withdraw more than b_{ii}

end of round R+X the bidder cannot have increased the number of MHz it is provisionally winning (either via standing high bids or provisionally winning withdrawn bids) compared to the sum of $w_i + b_{ii}$ in round R; or

- 2.69.2 The bidder is no longer provisionally winning withdrawn bids in lot type i. In that case, the application of the overall bid constraint as set out above will ensure that the sum of new bids in lot type i and standing high bids in lot type ii at the end of the most recent round (or alternatively new bids in lot type ii, if applicable) satisfies the constraint. Because the bidder is no longer provisionally winning withdrawn bids in lot type i, the condition will be sufficient to ensure the overall spectrum cap is not violated.

Bids with standing high bid status

- 2.70 Following the end of each principal stage round, Ofcom will determine standing high bids for each lot.
- 2.71 Standing high bids are determined for each lot category independently. The process for determining standing high bids is specified in regulations 33 to 36.

Eligibility limit for the subsequent principal stage rounds

- 2.72 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 50. The eligibility limit is equivalent to the eligibility points used by the bidder in the preceding round unless an eligibility event has occurred in respect of that round.
- 2.73 An eligibility event will occur where:
- 2.73.1 a bidder indicates on its principal stage form that it would like to carry forward its eligibility limit (regulations 48 and 52(a)); or
 - 2.73.2 a bidder did not submit a valid principal stage form in the most recent round and the number of eligibility points associated with its bids to which Ofcom assigned standing high bid status (after the end of the previous round) is lower than the bidder's eligibility limit for the most recent round (regulation 52(b)).
- 2.74 A bidder's eligibility limit can be carried forward up to three times during the principal stage (regulation 52). A bidder cannot request that its eligibility limit be carried forward in the first round or in any round where the bidder submits new bids or withdraws any bids with standing high bid status.
- 2.75 The eligibility points used by a bidder in a given round are calculated by reference to either:
- 2.75.1 the number of bids made by that bidder for a type of lot in that round; or
 - 2.75.2 where the bidder does not make bids for a type of lot in that round, the number of bids made by that bidder for that type of lot to which Ofcom assigned standing high bid status at the end of the most recent round. The effect of this proposed rule is therefore that a bidder's standing high bids for a type of lot may constrain the number of bids that can be made by that bidder in future rounds.

- 2.76 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 (regulation 51).
- 2.77 Over successive primary stage rounds, a bidder's eligibility limit can stay the same or can fall, but can never increase.

Withdrawing the standing high bid status of bids

- 2.78 As set out in regulation 47, in any principal stage round except the first a partial standing high bidder can indicate on its principal stage form that it wishes to withdraw the standing high bid status assigned to its bids. A partial standing high bidder is a bidder that made a number of bids but only some of which were assigned standing high bid status (i.e. they have standing high bid status on fewer lots than they actually bid for). There can only ever be one partial standing high bidder in a principal stage round, in each lot type.
- 2.79 By withdrawing standing high bids, the bidder frees up eligibility points which it can use for bids on lots of the other type. However, as explained below, a bidder which has withdrawn the standing high bid status of its bids may nevertheless win those lots at the end of the principal stage if they remain unallocated. A bidder's payment associated with any winning withdrawn lots will differ, as set out in paragraph 2.107 to 2.110 below.

Winning principal stage bids

- 2.80 Bids to which Ofcom had assigned standing high bid status after the final round of the principal stage will become winning bids, as set out in regulation 38. The Regulations refer to these as "bids with standing high bid status becoming winning principal stage bids". In this Notice, we refer to these as "winning standing high bids".
- 2.81 In addition, and as set out in regulations 39 and 40, if at the end of the final principal stage round Ofcom is unable to assign standing high bid status to all of the lots of a particular type - i.e. the lots remain unallocated (henceforth referred to as "unallocated lots") - the last bidder that withdrew the standing high bid status on bids for lots of that type will win those lots and be offered a licence containing those lots. The Regulations refer to these as "bids in respect of which standing high bid status was withdrawn becoming winning principal stage bids". We refer to these as "winning withdrawal bids" in the remainder of this document.
- 2.82 As noted above, by specifying a minimum spectrum requirement in the 3.4 GHz band, a bidder guarantees it will not be awarded less spectrum than the specified requirement in the event that it makes winning *standing high* bids. However, a bidder may be awarded less 3.4 GHz spectrum than its 3.4 GHz minimum requirement in the event that it makes winning *withdrawal* bids (regulation 40). In this case, the unallocated lots would then be offered to the bidder which had last withdrawn the standing high bid status of bids for 3.4 GHz, even if they contained less spectrum than that bidder's minimum 3.4 GHz requirement.
- 2.83 Each winning bid made by a bidder in the principal stage will be assigned a base price, in accordance with regulation 41.
- 2.83.1 The base price for a winning standing high bid will be a sum equal to the round price at which the winning bidder made that bid.

- 2.83.2 The base price for a winning withdrawal bid will be a sum equal to twice the round price at which the winning bidder made that bid.
- 2.84 However, and as discussed below, whilst a bidder which makes winning withdrawal bids will be offered the unallocated lots, it will be entitled to refuse a licence for those lots during the grant stage. In such a case, its liability to Ofcom for each of those lots would be one half of the base price (i.e. it will be liable for the round price at which it made that winning bid).

Deposits during the principal stage, including proposed amendments to the deposit rule

- 2.85 When a bidder has on deposit with Ofcom an amount which is less than its financial exposure in any round, Ofcom may require it to increase its deposit.
- 2.86 A bidder's financial exposure following a round corresponds to the sum of the following:
- 2.86.1 the number of bids for 2.3 GHz lots made by that bidder to which Ofcom assigned standing high bid status at the end of that round, multiplied by the round price at which the bids were made;
 - 2.86.2 the number of bids for 3.4 GHz lots made by that bidder to which Ofcom assigned standing high bid status at the end of that round, multiplied by the round price at which the bids were made;
 - 2.86.3 the number of unallocated 2.3 GHz lots which the bidder would win, if that round were the final principal stage round, as a result of the bidder having made winning withdrawal bids, multiplied by the (single) round price at which the bidder made the bids; and
 - 2.86.4 the number of unallocated 3.4 GHz lots which the bidder would win, if that round were the final principal stage round, as a result of the bidder having made winning withdrawal bids, multiplied by the (single) round price at which the bidder made the withdrawn bids.
- 2.87 Whilst a bidder may ultimately choose in the grant stage to accept a licence for unallocated lots that it has won under the withdrawal rules (in which case it will be liable to pay twice the round price for those lots), a bidder's financial exposure at this stage is only the single round price for those lots – i.e. one half of the base price for those lots.
- 2.88 Following our previous Notice, we have made a further amendment to the regulations regarding deposits during the principal stage. We had previously proposed that, where Ofcom has required a bidder to increase its deposit during the principal stage, the further sum owed would be at most the difference between the bidder's deposit and its financial exposure at the end of the most recent round before Ofcom notified the bidder. We are now proposing that this further sum shall be at most the difference between the amount the bidder has on deposit, and the bidder's highest financial exposure from any previous round.
- 2.89 The reason for this rule is 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 63.

- 2.90 Where a bidder fails to comply with a request from Ofcom (under regulation 63) that it increase its deposit, that bidder will not be entitled to submit any further principal stage forms. It will also be unable to submit an assignment stage form, which means it is deemed to have made assignment stage bid with a value of zero pounds.
- 2.91 A final principal stage deposit is required once the winning principal stage bids have been determined. A bidder's required final principal stage deposit is calculated in the same way as a bidder's financial exposure is calculated (see paragraphs 2.85 and 2.86 above above). It will therefore reflect:
- 2.91.1 the base price for its winning standing high bids; and
 - 2.91.2 one half of the base price for its winning withdrawal bids.
- 2.92 In accordance with regulation 64, where the bidder does not provide Ofcom with the required final principal stage deposit by the deadline specified by Ofcom, it will not be allowed to submit an assignment stage bid form. In these circumstances, the bidder will be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options.

Process

- 2.93 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.
- 2.94 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

- 2.95 Part 7 of the proposed Regulations sets out how radio frequencies are to be assigned to winning bidders (the "assignment stage").
- 2.96 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.
- 2.97 For the 2.3 GHz band, Ofcom will only consider combinations of assignment stage options 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 (regulations 73 and 75).
- 2.98 For the 3.4 GHz band, the combination of assignment stage options Ofcom will consider depends on whether the pre-existing licence holder applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded.
- 2.98.1 In the event that the pre-existing licence holder applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded, Ofcom will consider only those combinations of assignment stage options where each bidder is assigned a contiguous frequency block and where

any lots not assigned to any bidder also form a contiguous frequency block (regulations 78 and 82).

- 2.98.2 In the event that the pre-existing licence holder does not apply for a replacement licence, does not qualify to participate in the auction, or is otherwise excluded, Ofcom will prioritise combinations of assignment stage options in which all bidders are assigned contiguous spectrum. If however there are no such assignments, Ofcom will prioritise combinations of assignment stage options 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 combinations of assignment stage options in which the number of winners receiving non-contiguous frequencies is minimised (regulations 79 and 83).

Required assignment stage deposit

- 2.99 Bids placed in the assignment stage by a bidder will only be considered valid if the bidder provides Ofcom with a deposit that covers (regulation 89):
- 2.99.1 the required final principal stage deposit (see paragraph 2.91 above); plus
 - 2.99.2 the bidder's highest assignment stage bid for a 2.3 GHz assignment stage option; and
 - 2.99.3 the bidder's highest assignment stage bid for a 3.4 GHz assignment stage option.
- 2.100 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, in accordance with regulations 74(5) and 80(5).

Determination of winning assignment stage bids and additional prices

- 2.101 Of all combinations of assignment stage options that are compatible with valid assignment stage band plans, the one that yields the greatest value will be selected as the winning combination of assignment stage options.
- 2.102 Bidders will pay the opportunity cost of their bids, as set out in regulations 76 and 84.

Licences available under the auction

- 2.103 Regulation 91 sets out the five licences which Ofcom proposes to make available under the auction. These are:
- 2.103.1 2.3 GHz licences, which will be available to bidders which made winning *standing high bids* for 2.3 GHz lots;
 - 2.103.2 2.3 GHz withdrawn lot licences, which will be available to bidders which made winning *withdrawal* bids for 2.3 GHz lots;
 - 2.103.3 3.4 GHz licences, which will be available to bidders which made winning *standing high bids* for 3.4 GHz lots;

- 2.103.4 3.4 GHz withdrawn lot licences, which will be available to bidders which made winning *withdrawal* bids for 3.4 GHz lots; and
- 2.103.5 a replacement licence, which will be available if the pre-existing licence holder applies to participate in the auction and consents to the revocation of its existing licence for 3.4 GHz spectrum.
- 2.104 Following the end of the assignment stage, Ofcom will determine (for each licence to be awarded under the auction) the particular licence fee and the precise frequencies to be included in the licence. Regulations 92 to 98 set out how Ofcom will calculate individual licence fees and this is discussed in detail below. Regulations 99 to 101 explain how Ofcom will determine which frequencies should be included in the particular licences to be awarded to a bidder.
- 2.105 Ofcom will then notify each bidder which has won a 2.3 GHz and/or 3.4 GHz withdrawn lot licence of the licence fees and frequencies associated with its withdrawn lot licences and require each such bidder to confirm, by a deadline specified by Ofcom, whether it would like to accept (or refuse) those withdrawn lot licences. This requirement is set out in regulation 102. Where a bidder fails to provide this confirmation, Ofcom will assume that that bidder wishes to refuse any withdrawn lot licences offered to it.
- 2.106 Whilst it is unlikely, a bidder may be offered both a 2.3 GHz withdrawn lot licence and a 3.4 GHz withdrawn lot licence. In such a case, regulation 102 requires that bidder to either accept both licences or reject both licences; it cannot accept one and refuse the other.

Licence fees and refusal payments

Licence fees

- 2.107 Separate licence fees will be calculated in respect of each licence that a winning bidder has won. The licence fee for a particular licence will reflect the bidder's total base price (as defined in regulation 42) from the principal stage, which will differ depending on whether it is standard licence or withdrawn lot licence (see paragraph 2.103 above).
- 2.108 It may also reflect the bidder's 2.3 GHz or 3.4 GHz additional prices from the assignment stage round. Regulations 94 to 98 set out precise details of how to determine a bidder's licence fee.

Refusal payment

- 2.109 Where a bidder refuses any withdrawn lot licences offered to it, that bidder will not have to pay a licence fee in respect of those licences. However, it will be liable to pay a refusal payment in respect of those withdrawn lot licences and will not receive the unallocated lots.
- 2.110 Regulation 103 sets out how a bidder's refusal payment will be determined. It will comprise one half of that bidder's total base price from the principal stage (i.e. the round price for its winning withdrawal bids). It may also include that bidder's additional price from the assignment stage, depending on whether it has won any other licences under the auction.

Determination of the total auction sum

- 2.111 The total auction sum is the amount payable by a bidder before Ofcom will grant any licences and regulation 104 sets out how Ofcom would determine a bidder's total auction sum.
- 2.112 Ofcom will determine a bidder's total auction sum once the assignment stage has ended and the deadline for bidders to confirm whether they would like to accept (or refuse) withdrawn lot licences has passed.
- 2.113 The total auction sum payable by a winning bidder will comprise any licence fees and any refusal payment payable by the bidder.

Notification to bidders of their total auction sum

- 2.114 When Ofcom has determined the total auction sum payable by each winning bidder, it will notify each bidder of its total auction sum. It will also set a deadline by which bidders that have less than their total auction sum on deposit must increase their deposit (less any sum forfeited) to the level of the amount owed.
- 2.115 Regulation 107 provides that, where a bidder does not have its total auction sum on deposit by the deadline specified by Ofcom, it will not receive a refund of its deposit, which will (where not already forfeited) be forfeited. It will also not be entitled to the grant of any licences and will remain liable to pay the total auction sum to Ofcom.
- 2.116 One exception to this is where the pre-existing licence holder applies for a replacement licence and does not have its total auction sum on deposit by the deadline specified by Ofcom. In this case, regulation 107 makes clear that Ofcom would nevertheless grant that party a replacement licence (but not any other licences that it might have won as a result of bidding in the principal stage).

Granting of licences

- 2.117 If a winning bidder has its total auction sum on deposit with Ofcom by the deadline specified under regulation 106, Ofcom will grant licences to that bidder 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 total auction sum (regulations 107 and 109).
- 2.118 Interest, if any, will not be paid to applicants or bidders.
- 2.119 As explained above, if a bidder does not meet the payment requirement, it will not be entitled to the grant of any licences and will not receive a refund of its deposit, which will (where not already forfeited) be forfeited.

Completion of the award process

- 2.120 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 amount payable, details of the licences which would have been awarded, and fees which would have been paid.

Activity rules

- 2.121 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 (including by affecting a bidder's 2.3 GHz bid limit or overall bid constraint). A list of events is set out in regulation 115, 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.
- 2.122 Since the previous Notice of our proposed Regulations, we have decided to elaborate in the Regulations on one specific set of circumstances, even though we believe it is unlikely to arise, in a new regulation 114. This relates to how Ofcom would proceed in the event that the pre-existing licence holder was excluded during the award process. This addition is simply to provide greater certainty, in relation to a matter which would otherwise be within Ofcom's discretion under regulations 119 to 121. That wide discretion remains in place for all other similar eventualities.
- 2.123 In the event that the pre-existing licence holder has applied for a replacement licence but has subsequently been excluded from the award process, the new regulation 114 sets out that Ofcom will rerun the award process from the start of the first principal stage round. Once Ofcom has restarted the award process, the pre-existing licence holder will not be allowed to participate, and shall be deemed to have not applied for a replacement licence. Under these circumstances, the pre-existing licence holder's current spectrum holdings in the 3.4 GHz band would not be included in the assignment stage.

Question 1: Do you have any comments on the changes we are proposing to the draft Regulations, as summarised in paragraph 2.5 and described in detail in this Notice?

Question 2: Do you have any other comments on the drafting of the proposed draft Regulations?

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 14 August 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at spectrum <https://www.ofcom.org.uk/consultations-and-statements/category-3/notice-of-proposal-to-make-regulations-in-connection-with-the-award-of-2.3-ghz-and-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.

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: pssr.award@ofcom.org.uk

- A1.4 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.
- A1.5 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

- A1.6 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

- A1.7 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.

- A1.8 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.
- A1.9 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

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement.
- A1.11 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

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in annex 2.
- A1.13 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.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Steve.Gettings@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

Name/contact details/job title

Whole response

Organisation

Part of the response

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 questions

Question 1: Do you have any comments on the changes we are proposing to the draft Regulations, as summarised in paragraph 2.5 and described in detail in this Notice?

Question 2: Do you have any other comments on the drafting of the proposed draft Regulations?

Annex 5

Draft Wireless Telegraphy (Licence Award) Regulations 2017

2017 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Award) Regulations 2017

Made - - - - ***

Coming into force - - ***

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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 Act”), make 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 Act, published notice of their proposal in accordance

(a) 2006 c.36.

with section 122(4)(b) of the 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 Act.

PART 1

Introductory

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2017 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 76;
- “2.3 GHz assignment stage bid” shall be construed in accordance with regulation 72;
- “2.3 GHz assignment stage option” has the meaning given in regulation 72;
- “2.3 GHz assignment stage option list” has the meaning given in regulation 72;
- “2.3 GHz base price A” has the meaning given in regulation 41;
- “2.3 GHz base price B” has the meaning given in regulation 41;
- “2.3 GHz bid limit” has the meaning given in regulation 20;
- “2.3 GHz licence” has the meaning given in regulation 91;
- “2.3 GHz refusal payment” shall be construed in accordance with regulation 103;
- “2.3 GHz winning option” has the meaning given in regulation 99;
- “2.3 GHz withdrawn lot licence” has the meaning given in regulation 91;
- “3.4 GHz additional price” has the meaning given in regulation 84;
- “3.4 GHz assignment stage bid” shall be construed in accordance with regulation 77;
- “3.4 GHz assignment stage option” has the meaning given in regulation 77;
- “3.4 GHz assignment stage option list” has the meaning given in regulation 77;
- “3.4 GHz base price A” has the meaning given in regulation 41;
- “3.4 GHz base price B” has the meaning given in regulation 41;
- “3.4 GHz licence” has the meaning given in regulation 91;
- “3.4 GHz minimum requirement” means the number of 3.4 GHz lots selected by a bidder (if any) as its minimum requirement in the application submitted by that bidder to OFCOM in accordance with regulation 4(3)(a)(i);
- “3.4 GHz refusal payment” shall be construed in accordance with regulation 103;
- “3.4 GHz winning option” has the meaning given in regulation 100;
- “3.4 GHz withdrawn lot licence” has the meaning given in regulation 91;
- “additional 3.4 GHz lot” shall be construed in accordance with regulation 78;
- “additional deposit” has the meaning given in regulation 17;
- “additional price” means the 2.3 GHz additional price or the 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 22;

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

“assignment stage form” shall be construed in accordance with regulation 71;

“assignment stage options” means a 2.3 GHz assignment stage option or a 3.4 GHz assignment stage option;

“assignment stage round” shall be construed in accordance with regulation 68;

“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” means 2.3 GHz base price A, 2.3 GHz base price B, 3.4 GHz base price A or 3.4 GHz base price B;

“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 9;

“bidder ranking list” has the meaning given in regulation 34;

“category one bidders” has the meaning given in regulation 34;

“category two bidders” has the meaning given in regulation 34;

“category three bidder” has the meaning given in regulation 34;

“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;

“current round” means the principal stage round that has begun but has not yet ended;

“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;

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

“eligibility event” shall be construed in accordance with regulation 52;

“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 a principal stage round;

“eligibility points used” shall be construed in accordance with regulation 51;

“excess demand” shall be construed in accordance with regulation 55;

“existing spectrum holdings” has the meaning given in regulation 5(1);

“existing immediately useable spectrum holdings” has the meaning given in regulation 5(2);

“existing overall spectrum holdings” has the meaning given in regulation 5(3);

“financial exposure” shall be construed in accordance with regulation 63;

“GHz” means gigahertz;

“grant stage” has the meaning given in regulation 22;

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

“last day for withdrawal” has the meaning given in regulation 15;

“leftover 3.4 GHz lots” has the meaning given in regulation 78;

“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 frequencies comprised in one or more of the 2.3 GHz lots or 3.4 GHz lots to be determined in accordance with the procedure set out in Parts 6, 7 and 8 of these Regulations;

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

(d) 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” means the principal stage round that has most recently ended;

“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 bid list” has the meaning given in regulation 35;

“overall bid constraint” shall be construed in accordance with regulation 21;

“pounds” means pounds sterling;

“pre-existing licence” means the licence with number 1111442 which authorises the establishment, installation and use of wireless telegraphy stations and wireless telegraphy apparatus in the frequency ranges 3480-3500 MHz and 3580-3600 MHz(b) held by UK Broadband Limited;

“pre-existing licence holder” means UK Broadband Limited (a company with company registration number 04713634);

“previous round” means the principal stage round that immediately preceded the most recent round;

“principal stage” has the meaning given in regulation 22;

“principal stage bid” shall be construed in accordance with regulation 27;

“principal stage form” shall be construed in accordance with regulation 26;

“principal stage round” shall be construed in accordance with regulation 25;

“recorded spectrum holdings” means recorded immediately useable spectrum holdings and recorded overall spectrum holdings;

“recorded immediately useable spectrum holdings” shall be construed in accordance with regulation 19(2);

“recorded overall spectrum holdings” shall be construed in accordance with regulation 19(3);

“refusal payment” has the meaning given in regulation 103;

(a) 2006 c.46.

(b) These frequencies correspond to the 3.4 GHz lots numbered 15 to 18 and 35 to 38 in these Regulations.

“replacement licence” is a licence applied for under this award process which authorises the use of frequencies comprised in a block of eight 3.4 GHz lots on substantially the same terms, conditions and limitations which apply to the pre-existing licence;

“replacement lots” has the meaning given in regulation 23;

“required assignment stage deposit” shall be construed in accordance with regulation 89;

“required final principal stage deposit” shall be construed in accordance with regulation 64;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Parts 6 and 7 of these Regulations;

“round event” shall be construed in accordance with regulation 28;

“round price” shall be construed in accordance with regulations 29 and 30;

“standing high bid status” shall be construed in accordance with regulations 33 to 36;

“third party” has the meaning given in regulation 4;

“third party parent” has the meaning given in regulation 4;

“total 2.3 GHz base price A” has the meaning given in regulation 42;

“total 2.3 GHz base price B” has the meaning given in regulation 42;

“total 3.4 GHz base price A” has the meaning given in regulation 42;

“total 3.4 GHz base price B” has the meaning given in regulation 42;

“total auction sum” shall be construed in accordance with regulation 104;

“total base price” means, in respect of a bidder, that bidder’s total 2.3 GHz base price A (if any), total 2.3 GHz base price B (if any), total 3.4 GHz base price A (if any) and total 3.4 GHz base price B (if any);

“total frequencies associated with a principal stage form” has the meaning given in regulation 44;

“valid 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 74;

“valid 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 80;

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

“valid assignment stage form” shall be construed in accordance with regulation 71;

“valid combination of 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 75;

“valid combination of 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 82 or 83;

“valid request to carry forward its eligibility limit” shall be construed in accordance with regulation 26;

“valid withdrawal of standing high bid status” shall be construed in accordance with regulation 26;

“valid principal stage bid” shall be construed in accordance with regulation 26;

“valid principal stage form” shall be construed in accordance with regulation 26;

“winning 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 75;

“winning 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 81;

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

“winning bidder” means a winning bidder for 2.3 GHz lots or a winning bidder for 3.4 GHz lots;

“winning bidder for 2.3 GHz lots” shall be construed in accordance with regulations 38 and 39;

“winning bidder for 3.4 GHz lots” shall be construed in accordance with regulations 38 and 40;

“winning combination of valid 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 75;

“winning combination of valid 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 81;

“winning principal stage bid” shall be construed in accordance with regulation 37 to 40;

“withdrawal of standing high bid status” shall be construed in accordance with regulation 47; and

“withdrawn lot licence” means a 2.3 GHz withdrawn lot licence or a 3.4 GHz withdrawn lot licence.

(2) A reference in these Regulations to a “2.3 GHz lot” or a “3.4 GHz 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 lot”, a “numbered 3.4 GHz 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 the 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.

(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; and

(iii) a document setting out the details of the existing spectrum holdings of—

(aa) the applicant;

(bb) each other member of its applicant group;

- (cc) each person in whom the applicant has a material interest;
 - (dd) each person in whom any other member of its applicant group has a material interest;
 - (ee) any person (“third party”) who has entered into a contract or arrangement with the applicant (or with any other member of its applicant group or any person in whom the applicant or any other member of its applicant group has a material interest) to acquire rights under a licence granted pursuant to the award process;
 - (ff) any person who has a material interest in a third party (“third party parent”);
 - (gg) any person in whom a third party has a material interest;
 - (hh) any person in whom a third party parent has a material interest; and
- (b) subject to regulation 7(4), 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) OFCOM shall publish the day or days, times and deadline on their website.
- (5) The details of existing spectrum holdings that are required are—
- (a) the wireless telegraphy licence number; and
 - (b) the frequencies.

Meaning of existing spectrum holdings

- 5.—(1) In these Regulations “existing spectrum holdings” means—**
- (a) existing immediately useable spectrum holdings; and**
 - (b) existing overall spectrum holdings.**
- (2) “Existing immediately useable spectrum holdings” means—**
- (a) any authorisation to establish or use a wireless telegraphy station, or to install or use wireless telegraphy apparatus, under a wireless telegraphy licence which relates to any of the frequencies in the frequency bands listed in Schedule 7; and**
 - (b) any contract or arrangement under which such an authorisation is to be acquired.**
- (3) “Existing overall spectrum holdings” means—**
- (a) any authorisation to establish or use a wireless telegraphy station, or to install or use wireless telegraphy apparatus, under a wireless telegraphy licence which relates to any of the frequencies in the frequency bands listed in Schedule 8; and**
 - (b) any contract or arrangement under which such an authorisation is to be acquired.**

3.4 GHz minimum requirement rule

6. The 3.4 GHz minimum requirement which must be specified by the applicant in the document referred to in regulation 4(3)(a)(i) shall not be greater than four.

Application for a replacement licence

7.—(1) The pre-existing licence holder may apply to OFCOM for a replacement licence under this award process.

(2) No other person may apply to OFCOM for a replacement licence.

(3) To apply for a replacement licence, the pre-existing licence holder, in addition to meeting the requirements of regulation 4(3), must by the same deadline also deliver to OFCOM in the same sealed envelope—

- (a) a declaration, in the form set out in Schedule 4, signed by two persons on behalf of the pre-existing licence holder, consenting to the revocation of the pre-existing licence; and

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

(4) If the pre-existing licence holder indicates that it will participate only in the assignment stage (so that it is a winning bidder only in respect of eight 3.4 GHz lots in accordance with regulation 23) the requirement to pay an initial deposit of one hundred thousand pounds under regulation 4(3)(b) does not apply to the pre-existing licence holder.

PART 3

Qualification stage

CHAPTER 1

Qualification

Notification of names of applicants and associates

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

- (a) the name of each other applicant and the names of their associates; and
- (b) 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

9.—(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 regulations 4(3)(a)(i) to 4(3)(a)(iii) 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

10.—(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 13(2), 112 and 115 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 documents provided under regulations 4(3)(a)(i) and 4(3)(a)(iii) which comply 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) 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; and
- (b) a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Changes to existing spectrum holdings

11. If an applicant or, in relation to an applicant, any person referred to in regulation 4(3)(a)(iii) changes its existing spectrum holdings before existing spectrum holdings are recorded under regulation 19, the applicant must notify OFCOM and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Fitness to hold a licence

12.—(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

(a) 2003 c.21.

(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.

(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

13.—(1) Each applicant—

(a) which was not disqualified under regulation 12, 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 12),

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 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

14.—(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—

(i) whether it applied for a replacement licence; and

(ii) whether it will participate in the principal stage and the assignment stage, or only in the assignment stage.

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

Withdrawal of an application

15.—(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

16.—(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 15, 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 15, 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 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

17.—(1) A bidder which wishes to participate in the principal stage must pay, in addition to the initial deposit, a deposit of at least nine hundred thousand pounds (the "additional deposit") which shall be taken into account by OFCOM in accordance with regulation 18 for the purpose of calculating the bidder's eligibility limit for the first principal stage round.

(2) To pay the additional deposit, a bidder must, by a deadline specified by OFCOM, pay the additional deposit into OFCOM's bank account with accompanying information which identifies the bidder.

(3) Where a bidder does not pay the additional deposit by the deadline, 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.

(4) After the deadline specified under paragraph (2), OFCOM shall determine each bidder's eligibility limit for the first principal stage round in accordance with regulation 18 and shall record each bidder's existing spectrum holdings in accordance with regulation 19.

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

18.—(1) A bidder's eligibility limit shall be—

- (a) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is thirty million pounds or less, the number which is the amount of such deposit in pounds divided by one million;
- (b) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is more than thirty million pounds but less than seventy million pounds, the number (E) which is calculated in accordance with the formula set out in paragraph (2); and
- (c) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is seventy million pounds or more, forty-six.

(2) The formula is—

$$E = 30 + [(D - 30,000,000) / 2,500,000]$$

where "D" is the amount of the deposit in pounds.

(3) Where the number which results from the calculation in paragraphs (1)(a) or 1(b) is not a whole number, the bidder's eligibility limit shall be that number rounded down to the nearest whole number.

CHAPTER 3

Recording of existing spectrum holdings and determination of the 2.3 GHz bid limit

Recording of existing spectrum holdings

19.—(1) After the deadline specified in regulation 17(2), OFCOM shall, for each bidder, record—

- (a) the bidder's existing immediately useable spectrum holdings; and
- (b) the bidder's existing overall spectrum holdings.

(2) A bidder's existing immediately useable spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11

(3) A bidder's existing overall spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11.

(4) After the recording of spectrum holdings, the bidder and, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) may change its spectrum holdings but in relation to the award process—

- (a) the bidder shall be subject to regulations 112 and 115 if they apply to that change; and
- (b) the bidder's recorded spectrum holdings shall not be amended.

(5) If there is such a change, the bidder concerned must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Determination of the 2.3 GHz bid limits

20.— (1) Before the first principal stage round, OFCOM shall—

- (a) determine the maximum number of principal stage bids for 2.3 GHz lots, if any, each bidder may make **in any round** (the "2.3 GHz bid limit") in accordance with paragraph (2); and
- (b) notify each bidder of its 2.3 GHz bid limit.

(2) The 2.3 GHz bid limit for a bidder shall be—

- (a) zero bids for 2.3 GHz lots, where the total in MHz of that bidder's **recorded immediately useable spectrum holdings** is greater than 245 MHz;
- (b) one bid for a 2.3 GHz lot, where the total in MHz of that bidder's **recorded immediately useable spectrum holdings** is greater than 235 MHz but less than or equal to 245 MHz;
- (c) two bids for 2.3 GHz lots, where the total in MHz of that bidder's **recorded immediately useable spectrum holdings** is greater than 225 MHz but less than or equal to 235 MHz;
- (d) three bids for 2.3 GHz lots, where the total in MHz of that bidder's **recorded immediately useable spectrum holdings** is greater than 215 MHz but less than or equal to 225 MHz; or
- (e) four bids for 2.3 GHz lots, where the total in MHz of that bidder's **recorded immediately useable spectrum holdings** is equal to or less than 215 MHz.

(3) A bidder's 2.3 GHz bid limit shall not change during the principal stage.

Determination of overall bid constraints

21.—(1) Before the first principal stage round OFCOM shall—

- (a) determine for each bidder; and
- (b) notify to each bidder an overall bid constraint.

(2) The overall bid constraint may be different for each bidder.

(3) The overall bid constraint shall be expressed as a number of frequencies in MHz and shall be calculated in accordance with paragraphs (4) and (5).

(4) The number referred to in paragraph (3) shall be calculated in accordance with the formula $(340 \text{ MHz} - z)$, rounded down to the nearest multiple of 5 MHz, where z is the total in MHz of the bidder's recorded overall spectrum holdings.

(5) Where the number of MHz resulting from the calculation referred to in paragraph (4) is higher than 190 MHz, the number shall be 190 MHz and not that higher number.

(6) A bidder's overall bid constraint shall not change during the principal stage.

PART 4

Award process

Principal stage, assignment stage and grant stage

22.—(1) The process for the award of licences shall consist of the procedure set out in Part 6 (“principal stage”), the procedure set out in Part 7 (“assignment stage”) and the procedure set out in Part 8 (“grant stage”).

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

(3) Following completion of the principal stage, OFCOM shall determine the particular numbered 2.3 GHz lots and particular numbered 3.4 GHz 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 the grant stage.

PART 5

Participation by the pre-existing licence holder

Participation by the pre-existing licence holder where it is a bidder and has applied for a replacement licence

23. Where the pre-existing licence holder is a bidder and has applied for a replacement licence—

- (a) it may not participate in the principal stage unless it has indicated that it will do so on the document that it submitted in accordance with regulation 7(3)(b); and
- (b) it will be deemed to be a winning bidder in respect of eight 3.4 GHz lots with an associated base price of zero (“replacement lots”), without having made principal stage bids and in addition to any 3.4 GHz lots that it may have won as a result of making principal stage bids.

3.4 GHz lots available in the award process

24. The 3.4 GHz lots which are available in the award process shall be—

- (a) the 3.4 GHz lots numbered 1 to 14 and 19 to 34, if—
 - (i) the pre-existing licence holder is a bidder and has not applied for a replacement licence; or
 - (ii) the pre-existing licence holder is not a bidder; or
- (b) the 3.4 GHz lots numbered 1 to 38, if the pre-existing licence holder is a bidder and has applied for a replacement licence.

PART 6

The principal stage

CHAPTER 1

Principal stage rounds, principal stage forms, principal stage bids and round prices

Principal stage rounds

- 25.**—(1) During the principal stage, there shall be one or more principal stage rounds.
- (2) A principal stage round shall begin and end at the times notified by OFCOM under regulation 54.
- (3) The number of principal stage rounds shall be determined by OFCOM in accordance with regulation 28.

Principal stage form

- 26.**—(1) OFCOM shall provide each bidder in the principal stage with a principal stage form.
- (2) Subject to paragraph (8), a bidder is not required to submit a principal stage form in respect of each principal stage round.
- (3) Where a bidder chooses to complete a principal stage form in a respect of a principal stage round, that bidder must, on the principal stage form—
- (a) specify the number of principal stage bids for 2.3 GHz lots it wishes to make in that round;
 - (b) specify the number of principal stage bids for 3.4 GHz lots it wishes to make in that round;
 - (c) indicate whether it wishes to withdraw the standing high bid status of its bids for 2.3 GHz lots from consideration by OFCOM for the assignment of standing high bid status after the end of that round;
 - (d) indicate whether it wishes to withdraw the standing high bid status of its bids for 3.4 GHz lots from consideration by OFCOM for the assignment of standing high bid status after the end of that round; and
 - (e) indicate whether it wishes to carry forward its eligibility limit (as determined for that round) to the next round.
- (4) A principal stage form submitted by a bidder in a round is a valid principal stage form if—
- (a) the bidder has completed the form in accordance with paragraph (3);
 - (b) the bidder has submitted the form in accordance with regulation 59 or 60;
 - (c) the bidder has complied with regulations 43, 45, 46 and 49 in respect of any principal stage bids specified on the form;
 - (d) the bidder has complied with regulation 47 in respect of any withdrawal of standing high bid status indicated on the form;
 - (e) the bidder has complied with regulation 44 in respect of the total frequencies associated with the form; and

- (f) the bidder has complied with regulation 48 in respect of any request to carry forward its eligibility limit indicated on the form.
- (5) A principal stage bid is a valid principal stage bid if it is specified on a valid principal stage form.
- (6) A withdrawal of standing high bid status is a valid withdrawal of standing high bid status if it is indicated on a valid principal stage form.
- (7) Any request by a bidder to carry forward its eligibility limit is a valid request to carry forward its eligibility limit if it is indicated on a valid principal stage form.
- (8) Any bidder in the principal stage which, in the first principal stage round, does not specify at least one valid principal stage bid 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

- 27.**—(1) Each principal stage bid is a bid for the inclusion in a licence of one lot of a particular type at the round price for a lot of that type or, in the circumstances described in paragraph (2), at twice the round price for a lot of that type.
- (2) The circumstances are where the principal stage bid becomes a winning principal stage bid after withdrawal of that bid's standing high bid status in accordance with regulation 39 or 40.

Number of principal stage rounds

- 28.**—(1) After the end of each principal stage round, OFCOM shall determine whether there was a round event in that round in accordance with paragraph (4).
- (2) Where OFCOM determine 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 37.
- (3) Where OFCOM determine that there was a round event in that principal stage round, there shall be another principal stage round.
- (4) There was a round event in a principal stage round where—
- (a) a bidder specified a valid principal stage bid in that round;
 - (b) a bidder indicated a valid withdrawal of standing high bid status in that round; or
 - (c) an eligibility event occurred in that round.

Round prices for the first principal stage round

- 29.** For the first principal stage round—
- (a) the round price for each 2.3 GHz lot shall be ten million pounds; and
 - (b) the round price for each 3.4 GHz lot shall be one million pounds.

Determination of round prices for subsequent principal stage rounds

- 30.**—(1) For each subsequent principal stage round—
- (a) the round price for each 2.3 GHz lot shall be determined by OFCOM in accordance with regulation 31; and
 - (b) the round price for each 3.4 GHz lot shall be determined by OFCOM in accordance with regulation 32.
- (2) The round price shall be the same for each lot of the same type.

Round price for 2.3 GHz lots

31.—(1) The round price for each 2.3 GHz 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 2.3 GHz lot shall be higher than it was for the most recent round.

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

Round price for 3.4 GHz lots

32.—(1) The round price for each 3.4 GHz 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 lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to thirty valid principal stage bids for 3.4 GHz lots at the round price of the most recent round.

CHAPTER 2

Assignment of standing high bid status

Assignment of standing high bid status by OFCOM after the end of each principal stage round

33.—(1) After the end of each principal stage round, OFCOM shall assign standing high bid status to valid principal stage bids for 2.3 GHz lots and valid principal stage bids for 3.4 GHz lots in accordance with paragraphs (2) and (3).

(2) OFCOM shall assign standing high bid status for each lot type separately.

(3) OFCOM shall assign standing high bid status by—

- (a) first, identifying and ranking the bidders in accordance with regulation 34;
- (b) second, identifying and ranking the bids made by those bidders in accordance with regulation 35; and
- (c) third, assigning standing high bid status to those bids in accordance with regulation 36.

Process for assigning standing high bid status: ranking the bidders

34.—(1) For each lot type separately, OFCOM shall identify the bidders that fall into one of the following three categories such that—

- (a) the first category contains the bidders (if any) (“category one bidders”) which made valid principal stage bids for a lot of that type at the round price of the most recent round (whether made in the most recent round or in an earlier round);
- (b) the second category contains the bidders (if any) (“category two bidders”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—
 - (i) the bids were made at a round price which was lower than the round price of the most recent round; and
 - (ii) all of the bids were assigned standing high bid status by OFCOM after the end of the previous round;
- (c) the third category contains the only bidder (if any) (“category three bidder”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—

- (i) the bids were made at a round price which was lower than the round price of the most recent round;
- (ii) some but not all of the bids were assigned standing high bid status by OFCOM after the end of the previous round; and
- (iii) the standing high bid status of the bids was not withdrawn by the bidder in the most recent round in accordance with regulation 47.

(2) For each lot type separately, OFCOM shall rank the bidders on a list (“bidder ranking list”) so that—

- (a) category one bidders appear above category two bidders and above any category three bidder;
- (b) category two bidders appear above any category three bidder; and
- (c) within each category, bidders are ranked in a random order.

Process for assigning standing high bid status: ranking the bids

35.—(1) For each lot type separately, OFCOM shall identify the relevant valid principal stage bids for each bidder included in the bidder ranking list.

(2) The relevant valid principal stage bids are—

- (a) for category one bidders, all the valid principal stage bids for lots of that type made by the bidder in the latest round in which it submitted bids;
- (b) for category two and category three bidders, all the valid principal stage bids for lots of that type made by the bidder which were assigned standing high bid status after the end of the previous round.

(3) For each lot type separately, OFCOM shall rank those bids on a list (“overall bid list”) so that all the relevant valid principal stage bids made by a bidder which is ranked higher on the bidder ranking list appear above the relevant valid principal stage bids made by a bidder which is ranked lower on the bidder ranking list.

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

36.—(1) For each lot type separately, OFCOM shall assign standing high bid status to bids in the overall bid list by giving such status to bids in the order in which they appear in the list, starting from the top of the list.

(2) For each lot type separately, OFCOM shall assign standing high bid status to bids until each bid in the overall bid list has been assigned standing high bid status or until the number of bids to which OFCOM has assigned standing high bid status is equal to the number of lots of that type which are available in the award process (whichever happens first).

CHAPTER 3

Winning principal stage bids and determination of base price and overall bid constraints

Determination of the winning principal stage bids

37.—(1) Where OFCOM have determined in accordance with regulation 28 that there shall be no further principal stage rounds—

- (a) principal stage bids with standing high bid status shall become winning principal stage bids in accordance with regulation 38; and
- (b) principal stage bids in respect of which standing high bid status was withdrawn shall also become winning principal stage bids in accordance with regulations 39 or 40.

Bids with standing high bid status becoming winning principal stage bids

38.—(1) Principal stage bids with standing high bid status shall become winning principal stage bids if they are bids to which paragraph (2) applies.

(2) The bids to which this paragraph applies are—

- (a) the principal stage bids for 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round; and
- (b) subject to paragraph (3), the principal stage bids for 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

(3) Where a bidder has specified a 3.4 GHz minimum requirement and OFCOM has assigned standing high bid status to fewer principal stage bids for 3.4 GHz lots made by the bidder than its 3.4 GHz minimum requirement—

- (a) those bids for 3.4 GHz lots with standing high bid status will not become winning principal stage bids; and
- (b) there will be no winning bidder for the 3.4 GHz lots for which those bids were made.

2.3 GHz bids in respect of which standing high bid status was withdrawn becoming winning principal stage bids

39.—(1) Subject to paragraph (3), principal stage bids for 2.3 GHz lots in respect of which standing high bid status was withdrawn shall become winning principal stage bids for those lots in the circumstances described in paragraph (2).

(2) The circumstances are where—

- (a) following the principal stage round in which the standing high bid status of those bids was withdrawn, no bidder withdrew standing high bid status from bids for any 2.3 GHz lots; and
- (b) after the end of the final principal stage round, OFCOM does not assign standing high bid status to four principal stage bids for 2.3 GHz lots.

(3) The number of principal stage bids for 2.3 GHz lots which shall become winning principal stage bids under this regulation shall be the number calculated in accordance with paragraph (4).

(4) The number referred to in paragraph (3) shall be calculated in accordance with the formula $(4-x)$, where x is the number of 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

3.4 GHz bids in respect of which standing high bid status was withdrawn becoming winning principal stage bids

40.—(1) Subject to paragraph (3), principal stage bids for 3.4 GHz lots in respect of which standing high bid status was withdrawn shall become winning principal stage bids for those lots in the circumstances described in paragraph (2).

(2) The circumstances are where—

- (a) following the principal stage round in which the standing high bid status of those bids was withdrawn, no bidder withdrew standing high bid status from bids for any 3.4 GHz lots; and
- (b) after the end of the final principal stage round, OFCOM does not assign standing high bid status to thirty principal stage bids for 3.4 GHz lots.

(3) The number of principal stage bids for 3.4 GHz lots which shall become winning principal stage bids under this regulation shall be the number calculated in accordance with paragraph (4).

(4) The number referred to in paragraph (3) shall be calculated in accordance with the formula $(30-y)$, where y is the number of 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

(5) Principal stage bids for 3.4 GHz lots in respect of which standing high bid status was withdrawn, and which were made in the circumstances described in paragraph (2), shall become winning principal stage bids even if the number of 3.4 GHz lots associated with those winning principal stage bids is less than that bidder's 3.4 GHz minimum requirement.

Determination of base price

41.—(1) The base price for a 2.3 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 38 (“2.3 GHz base price A”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.

(2) The base price for a 3.4 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 38 (“3.4 GHz base price A”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.

(3) The base price for a 2.3 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 39 (“2.3 GHz base price B”) will be a sum equal to twice the round price at which the winning bidder made that winning principal stage bid.

(4) The base price for a 3.4 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 40 (“3.4 GHz base price B”) will be a sum equal to twice the round price at which the winning bidder made that winning principal stage bid.

Determination of total base price

42.—(1) A reference to a winning bidder's “total 2.3 GHz base price A” is a reference to that winning bidder's 2.3 GHz base price A multiplied by the number of 2.3 GHz lots won by that bidder in accordance with regulation 38.

(2) A reference to a winning bidder's “total 3.4 GHz base price A” is a reference to that winning bidder's 3.4 GHz base price A multiplied by the number of 3.4 GHz lots won by that bidder in accordance with regulation 38.

(3) A reference to a winning bidder's “total 2.3 GHz base price B” is a reference to that winning bidder's 2.3 GHz base price B multiplied by the number of 2.3 GHz lots won by that bidder in accordance with regulation 39.

(4) A reference to a winning bidder's “total 3.4 GHz base price B” is a reference to that winning bidder's 3.4 GHz base price B multiplied by the number of 3.4 GHz lots won by that bidder in accordance with regulation 40.

CHAPTER 4

Constraints for principal stage bids, withdrawals of standing high bid status and carrying forward an eligibility limit

SECTION 1

Constraints for principal stage bids

Maximum number of principal stage bids for 2.3 GHz lots and 3.4 GHz lots

43. In any principal stage round—

- (a) the number of principal stage bids for 2.3 GHz lots that a bidder may make shall not exceed that bidder's 2.3 GHz bid limit; and
- (b) the number of principal stage bids for 3.4 GHz lots that a bidder may make shall not exceed thirty.

Overall bid constraint rule

44. (1) In addition to the limitation on bidding in regulation 43, in any principal stage round, the total frequencies associated with a bidder's principal stage form must not exceed the number of MHz for that bidder which is that bidder's overall bid constraint.

(2) The "total frequencies associated with a principal stage form" means, in relation to a bidder in a principal stage round, the total number of MHz which is the sum of A plus B where—

(a) "A" is—

(i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 2.3 GHz lots, the number of such bids multiplied by 10 MHz; or

(ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 2.3 GHz lots—

(aa) the number of principal stage bids for 2.3 GHz lots made by that bidder which were assigned standing high bid status at the end of the most recent round, multiplied by 10 MHz; and

(bb) if no such principal stage bids for 2.3 GHz lots made by that bidder were assigned standing high bid status at the end of the most recent round, zero; and

(b) "B" is—

(i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 3.4 GHz lots, the number of such bids multiplied by 5 MHz; or

(ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 3.4 GHz lots—

(aa) the number of principal stage bids for 3.4 GHz lots made by that bidder which were assigned standing high bid status at the end of the most recent round, if any, multiplied by 5 MHz; and

(bb) if no such principal stage bids for 3.4 GHz lots made by that bidder were assigned standing high bid status at the end of the most recent round, zero.

Number of principal stage bids following assignment of standing high bid status

45. A bidder which made principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round must (if making bids for lots of the same type in the next round) specify, on its principal stage form, a number of bids for lots (of that type) which—

(a) is the same as or higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has increased from the most recent round;

(b) is higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has not increased from the most recent round.

3.4 GHz minimum requirement

46. Where a bidder has specified a 3.4 GHz minimum requirement, the number of principal stage bids for 3.4 GHz lots that bidder specifies on a principal stage form (if any) must be at least its 3.4 GHz minimum requirement.

SECTION 2

Withdrawal of Standing High Bid Status

Withdrawal of Standing High Bid Status

47.—(1) In any principal stage round except the first one, a bidder may indicate on its principal stage form that it wishes to withdraw the standing high bid status of the bids which OFCOM assigned standing high bid status following the most recent round in accordance with this regulation.

(2) Where a bidder withdraws the standing high bid status of bids in a round, the bids which had such standing high bid status will not be considered by OFCOM for the assignment of standing high bid status after that round.

(3) A bidder may withdraw the standing high bid status of bids for one or both types of lot.

(4) Where a bidder withdraws the standing high bid status of bids for a type of lot, it shall withdraw the standing high bid status of all its bids for that type of lot.

(5) A bidder may only withdraw the standing high bid status of bids for a type of lot in a principal stage round if each of the following applies—

- (a) following the end of the most recent round, OFCOM assigned standing high bid status to some but not all of the bidder's principal stage bids for lots of that type made in the latest round in which the bidder made bids for lots of that type;
- (b) the bidder makes no valid principal stage bids for lots of that type in the current round;
- (c) the bidder has not withdrawn the standing high bid status of bids for lots of either type on five previous occasions.

SECTION 3

Request by a bidder to carry forward its eligibility limit

Request by a bidder to carry forward its eligibility limit

48.—(1) In any principal stage round except the first one, a bidder may indicate on its principal stage form that it wishes to carry forward its eligibility limit (as determined for that round in accordance with regulation 50) to the next round if the conditions set out in paragraphs (2) to (4) are met.

(2) The first condition is that the bidder does not, in the current round, do any of the following—

- (a) specify a valid principal stage bid for 2.3 GHz lots on its principal stage form;
- (b) specify a valid principal stage bid for 3.4 GHz lots on its principal stage form; or
- (c) indicate a valid withdrawal of standing high bid status of any of its principal stage bids.

(3) The second condition is that the number of eligibility points associated with the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round is lower than the bidder's eligibility limit for the current round.

(4) The third condition is that carrying forward the eligibility limit would comply with the limit on the number of eligibility events set out in regulation 52.

CHAPTER 5

Eligibility

Eligibility rule

49.—(1) The number of eligibility points used by a bidder in a principal stage round, calculated in accordance with regulation 51, may not exceed that bidder's eligibility limit for that round, calculated in accordance with regulation 50.

(2) In this Chapter, a round in relation to which the number of eligibility points used is calculated is referred to as the “current round”.

Determination of a bidder’s eligibility limit

50.—(1) A bidder’s eligibility limit shall be the number determined by OFCOM—

- (a) for the first principal stage round, in accordance with regulation 18; and
- (b) for the second and each subsequent principal stage round, in accordance with paragraphs (2) and (3).

(2) In relation to the second and each subsequent principal stage round, the bidder’s eligibility limit shall be equal to the number of eligibility points used by the bidder in the most recent round, except where an eligibility event occurred in the most recent round.

(3) In relation to each principal stage round where an eligibility event occurred in the most recent round, the bidder’s eligibility limit shall be the same as its eligibility limit for the most recent round.

Eligibility points used by a bidder

51.—(1) The number of eligibility points used by a bidder in the current round shall be the number equal to the sum of the 2.3 GHz number calculated in accordance with paragraph (2) and the 3.4 GHz number calculated in accordance with paragraph (3).

(2) The 2.3 GHz number referred to in paragraph (1) is—

- (a) where the bidder has specified a number of principal stage bids for 2.3 GHz lots in the current round, the number of bids for 2.3 GHz lots in that round specified on that bidder’s principal stage form, multiplied by four;
- (b) where the bidder has not specified any principal stage bids for 2.3 GHz lots in the current round, the number of bids for 2.3 GHz lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round and in respect of which the standing high bid status is not withdrawn by the bidder in the current round, multiplied by four;
- (c) where the bidder has not specified any principal stage bids for 2.3 GHz lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 2.3 GHz lots made by that bidder, zero.

(3) The 3.4 GHz number referred to in paragraph (1) is—

- (a) where the bidder has specified a number of principal stage bids for 3.4 GHz lots in the current round, the number of bids for 3.4 GHz lots in that round specified on that bidder’s principal stage form;
- (b) where the bidder has not specified any principal stage bids for 3.4 GHz lots in the current round, the number of principal stage bids for 3.4 GHz lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round and in respect of which the standing high bid status is not withdrawn by the bidder in the current round;
- (c) where the bidder has not specified any principal stage bids for 3.4 GHz lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 3.4 GHz lots made by that bidder, zero

Eligibility event

52.—(1) An eligibility event has occurred in a round where—

- (a) the bidder indicated a valid request to carry forward its eligibility limit in the most recent round on its principal stage form; or
- (b) the conditions set out in paragraph (2) apply.

- (2) The conditions are that—
- (a) the bidder did not, in the most recent round, submit a valid principal stage form;
 - (b) the number of eligibility points associated with the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the previous round is lower than the bidder's eligibility limit for the most recent round; and
 - (c) the limit on the number of eligibility events set out in paragraph (3) is not met.
- (3) For each bidder, an eligibility event may not occur on more than three occasions.
- (4) After the end of each principal stage round, except after the end of the final principal stage round, OFCOM will notify each bidder of the remaining number of occasions on which an eligibility event may occur in respect of that bidder.

CHAPTER 6

Deposit constraint

Deposit constraint on bidding

53.—(1) Where, after the end of a principal stage round, OFCOM has notified a bidder under regulation 63(5) that it has not complied with the requirement to pay a further sum as a deposit, that bidder—

- (a) may not submit a principal stage form in the next principal stage round nor in any subsequent principal stage rounds; and
- (b) may not submit an assignment stage form in the assignment stage round and shall be deemed to have made a valid assignment stage bid with a value of zero pounds for each of its assignment stage options.

(2) Such a bidder is not excluded from the award process for that reason.

(3) Any principal stage bids made by that bidder to which OFCOM has assigned standing high bid status after the end of the final principal stage round will become winning principal stage bids in accordance with regulation 38.

(4) Any principal stage bids made by that bidder in respect of which standing high bid status was withdrawn will become winning principal stage bids in accordance with regulation 39 or 40 if, after the end of the final principal stage round, the circumstances described in regulation 39(2) or 40(2) apply.

CHAPTER 7

Information released during and following the principal stage

Notice to be given to bidders before each principal stage round

54. Before the start of each principal stage round, OFCOM shall notify each bidder of—

- (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) a 2.3 GHz lot; and
 - (ii) a 3.4 GHz lot;
- (c) the remaining number of principal stage rounds in which the bidder may withdraw the standing high bid status of bids;
- (d) the remaining number of occasions on which an eligibility event may occur in respect of that bidder; and
- (e) the bidder's eligibility limit for that principal stage round.

Notification of information to bidders after the end of each principal stage round

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

- (a) for each lot type, the number of valid principal stage bids made by the bidder in the most recent round;
- (b) for each lot type, the number of valid principal stage bids made by the bidder to which OFCOM has assigned standing high bid status after the end of the most recent round;
- (c) for each lot type for which the bidder made valid principal stage bids to which OFCOM assigned standing high bid status, the round price of the round when those principal stage bids were made;
- (d) for each lot type, whether the bidder indicated a valid withdrawal of standing high bid status in the most recent round;
- (e) the remaining number of rounds in which the bidder may withdraw the standing high bid status of bids;
- (f) the remaining number of occasions on which an eligibility event may occur in respect of that bidder;
- (g) the bidder’s eligibility limit for the next principal stage round;
- (h) the bidder’s financial exposure after the end of the most recent round;
- (i) for 2.3 GHz lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (2); and
- (j) for 3.4 GHz lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (4);

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

(3) The formula is—

$$ed_{2.3GHz} = (e + f - 4) \times 10$$

where—

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

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

(5) The formula is—

$$ed_{3.4GHz} = (g + h - 30) \times 5$$

where—

- (a) “g” is the total number of valid principal stage bids for 3.4 GHz lots made by all bidders in the most recent round;
- (b) “h” is the total number of valid bids for 3.4 GHz lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 3.4 GHz lots in the most recent round, and who did not withdraw the standing high bid status of bids for 3.4 GHz lots in the most recent round.

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

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

- (a) the round price for—
 - (i) each 2.3 GHz lot; and
 - (ii) each 3.4 GHz lot;
- (b) for each lot type separately, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand.

Notification of results of the principal stage to bidders

57. After the end of the final principal stage round, and after the determination of the winning principal stage bids and the determination of the base price for each winning principal stage bid, OFCOM shall notify each bidder of—

- (a) the end of the principal stage; and
- (b) the names of the winning bidders, and in respect of each of them—
 - (i) the number of 2.3 GHz lots won, the 2.3 GHz base price A and the 2.3 GHz base price B; and
 - (ii) the number of 3.4 GHz lots won, the 3.4 GHz base price A and the 3.4 GHz base price B.

Publication of results of the principal stage

58. After the notification given in accordance with regulation 57, OFCOM shall publish on their website—

- (a) the names of the winning bidders, and in respect of each of them—
 - (i) the number of 2.3 GHz lots won, the 2.3 GHz base price A and the 2.3 GHz base price B; and
 - (ii) the number of 3.4 GHz lots won, the 3.4 GHz base price A and the 3.4 GHz base price B; and
- (b) the number of 2.3 GHz lots and the number of 3.4 GHz lots not won by any bidder.

CHAPTER 8

Procedure for principal stage

Submission of principal stage form to OFCOM

59.—(1) A bidder must submit the completed principal stage form to OFCOM by using the electronic auction system, except as provided for in regulation 60.

(2) The completed principal stage form must be received by OFCOM by the time notified by OFCOM under regulation 54(a) as the end of the principal stage round.

Alternative method for submission of principal stage form

60.—(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 notify 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

61.—(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 the matters set out in regulation 26(2), 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.

Notification that principal stage form is not valid

62. 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 9

Deposits during and following the principal stage

Deposits during the principal stage

63.—(1) Where, after the end of any principal stage round, the amount a bidder has on deposit with OFCOM for the purposes of the award process is less than the bidder's financial exposure, OFCOM may, having regard to the desirability of securing an efficient outcome to the principal stage, notify the bidder that it is required to pay a further sum in pounds as a deposit.

(2) A bidder's financial exposure after the end of a principal stage round shall be the amount in pounds which is equal to the sum of—

- (a) the number of that bidder's principal stage bids for 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
- (b) the number of that bidder's principal stage bids for 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
- (c) the number of that bidder's principal stage bids for 2.3 GHz lots which would become winning principal stage bids in accordance with regulation 39 (following the withdrawal of standing high bid status) if that principal stage round was the final principal stage round, multiplied by the round price at which those bids were made; and
- (d) the number of that bidder's principal stage bids for 3.4 GHz lots which would become winning principal stage bids in accordance with regulation 40 (following the withdrawal of standing high bid status) if that principal stage round was the final principal stage round, multiplied by the round price at which those bids were made.

(3) The further sum shall be an amount determined by OFCOM such that the total amount that the bidder is required to have on deposit is at most the amount of the bidder's highest financial exposure after the end of any of the previous principal stage rounds before OFCOM gave notice to the bidder under paragraph (1).

(4) Any such sum must be paid into OFCOM's bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(5) Where a bidder does not satisfy the requirements set out in paragraph (4), OFCOM shall notify the bidder of that fact.^a

Required final principal stage deposit

64.—(1) A further sum in pounds must be paid into OFCOM's bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM ("required final principal stage deposit").

(2) In respect of any bidder, the required 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 the sum of—

- (a) that bidder's total 2.3 GHz base price A;
- (b) that bidder's total 3.4 GHz base price A;
- (c) one half of that bidder's total 2.3 GHz base price B; and
- (d) one half of that bidder's total 3.4 GHz base price B.

(3) Where a bidder does not satisfy the requirements set out in paragraph (1)—

- (a) OFCOM shall notify the bidder; and
- (b) the bidder shall not be excluded from the award process, but may not make assignment stage bids and will be deemed to have made valid assignment stage bids with a value of zero pounds for its assignment stage options.

PART 7

Assignment stage

CHAPTER 1

Assignment stage: Preliminary

Assignment stage

65.—(1) Where there are no winning bidders following completion of the principal stage and either—

- (a) the pre-existing licence holder is not a bidder; or
- (b) the pre-existing licence holder is a bidder but did not apply for a replacement licence,

there shall be no assignment stage and no licences shall be granted.

(2) Where—

- (a) there are winning bidders following completion of the principal stage; or
- (b) the pre-existing licence holder is a bidder and did apply for a replacement licence,

OFCOM shall assign lots in a single assignment stage round in accordance with the procedure set out in chapters 2 to 6.

^a Regulation 53 contains provisions which apply.

CHAPTER 2

Assignment without bidding

Assignment of numbered 2.3 GHz lots without bidding

66. Where there is only one winning bidder for all of the 2.3 GHz lots, OFCOM shall assign all of the 2.3 GHz lots to that winning bidder.

Assignment of numbered 3.4 GHz lots without bidding

67.—(1) Where the pre-existing licence holder is a bidder and—

- (a) did apply for a replacement licence, and
- (b) is the winning bidder for all of the 3.4 GHz lots,

OFCOM shall assign all of the 3.4 GHz lots to the pre-existing licence holder.

(2) Where—

- (a) the pre-existing licence holder—
 - (i) is not a bidder; or
 - (ii) is a bidder but did not apply for a replacement licence; and
- (b) there is only one winning bidder for 3.4 GHz lots; and
- (c) that winning bidder won thirty 3.4 GHz lots,

OFCOM shall assign the lower 3.4 GHz frequency range and the upper 3.4 GHz frequency range to that winning bidder.

(3) Where—

- (a) the pre-existing licence holder—
 - (i) is not a bidder; or
 - (ii) is a bidder but did not apply for a replacement licence; and
- (b) there are two winning bidders for 3.4 GHz lots; and
- (c) one winning bidder won fourteen 3.4 GHz lots and the other winning bidder won sixteen 3.4 GHz lots,

OFCOM shall assign the lower 3.4 GHz frequency range to the bidder who won fourteen 3.4 GHz lots, and the upper 3.4 GHz frequency range to the bidder who won sixteen 3.4 GHz lots.

CHAPTER 3

Assignment by bidding

Assignment of numbered 2.3 GHz lots by bidding

68. Except where regulation 66 applies, the particular numbered 2.3 GHz lots that are to be assigned to the winning bidder or bidders for the 2.3 GHz lots shall be determined by bidding in one further round of bidding (the “assignment stage round”) in accordance with the procedure set out in regulations 70 to 76.

Assignment of numbered 3.4 GHz lots by bidding

69. Except where regulation 67 applies, the particular numbered 3.4 GHz lots that are to be assigned to the winning bidder or bidders for the 3.4 GHz lots shall be determined by bidding in the assignment stage round in accordance with the procedure set out in regulations 70, 71 and 77 to 84.

Assignment stage round

70.—(1) Only the following bidders may bid in the assignment stage round—

- (a) winning bidders for 2.3 GHz lots; and
- (b) winning bidders for 3.4 GHz lots.

(2) The assignment stage round shall begin and end at the times notified by OFCOM under regulation 85.

Assignment stage form

71.—(1) OFCOM shall provide each winning bidder with an assignment stage form.

(2) To bid in the assignment stage round, a bidder must specify on the assignment stage form—

- (a) the bidder's 2.3 GHz assignment stage bids, if any, in accordance with regulation 74; and
- (b) the bidder's 3.4 GHz assignment stage bids, if any, in accordance with regulation 80.

(3) An assignment stage form is a valid assignment stage form if—

- (a) the bidder has complied with regulations 74(1) and 74(2) or regulations 80(1) and 80(2) in respect of all assignment stage bids specified on the form; and
- (b) the bidder has submitted the form in accordance with regulation 86 or 87.

(4) Where a bidder submits an assignment stage form which is not a valid assignment stage form, OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the assignment stage form is not a valid assignment stage form.**a**

CHAPTER 4

2.3 GHz frequency assignments determined by bidding

Bidding for numbered 2.3 GHz lots in the assignment stage

72.—(1) A 2.3 GHz assignment stage bid shall be a bid for one or more licences that authorise the use of frequencies corresponding to the particular numbered 2.3 GHz lots comprised in a block of numbered 2.3 GHz lots.

(2) OFCOM shall determine which blocks of numbered 2.3 GHz lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks of numbered 2.3 GHz lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “2.3 GHz assignment stage option list” and each block of 2.3 GHz 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

73.—(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 in accordance with regulation 70.

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

- (a) the number of 2.3 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 2.3 GHz lots; and
- (b) if that bidder were assigned the 2.3 GHz lots contained in the block the following conditions would be satisfied—

a Regulations 74(5) and 80(5) contain provisions which apply.

- (i) each other bidder could be assigned 2.3 GHz lots contained in a block that, in respect of that other bidder's winning principal stage bids for 2.3 GHz lots, satisfies the condition in sub-paragraph (a); and
- (ii) the 2.3 GHz lots not assigned to that bidder or any other bidder would form a single block of numbered 2.3 GHz lots.

2.3 GHz assignment stage bids

74.—(1) In order to 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 total 2.3 GHz base price A and the total 2.3 GHz base price B for that bidder's winning principal stage bids for 2.3 GHz lots, for one or more licences that authorise the use of the frequencies corresponding to the block of numbered 2.3 GHz 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) A 2.3 GHz assignment stage bid is a valid 2.3 GHz assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum required under regulation 89 by the deadline specified by OFCOM under regulation 89.

(5) Where a bidder does not make a valid 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option that bidder will be deemed to have made a valid 2.3 GHz assignment stage bid with a value of zero pounds for that 2.3 GHz assignment stage option.

Determination of the winning 2.3 GHz assignment stage bids

75.—(1) OFCOM shall determine the winning 2.3 GHz assignment stage bids in accordance with this regulation after the deadline for paying the required assignment stage deposit under regulation 89.

(2) 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.

(3) 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.

(4) 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 for 2.3 GHz lots;
- (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 73;
- (c) no numbered 2.3 GHz lot is included in more than one of the 2.3 GHz assignment stage bids included in the combination of valid 2.3 GHz assignment stage bids; and
- (d) the numbered 2.3 GHz lots not included in that combination of valid 2.3 GHz assignment stage bids, taken together, form a single block of numbered 2.3 GHz lots.

(5) Where there is more than one valid combination of 2.3 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 2.3 GHz assignment stage bids for which the value is equal highest to determine the winning combination of valid 2.3 GHz assignment stage bids.

Determination of 2.3 GHz additional prices

76. 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 5.

CHAPTER 5

3.4 GHz frequency assignments determined by bidding

Bidding for numbered 3.4 GHz lots in the assignment stage

77.—(1) A 3.4 GHz assignment stage bid shall be a bid for one or more licences that authorise the use of the frequencies corresponding to the particular numbered 3.4 GHz lots comprised in a block or pair of blocks of numbered 3.4 GHz lots.

(2) OFCOM shall determine the blocks and pairs of blocks of numbered 3.4 GHz lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks and pairs of blocks of numbered 3.4 GHz lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “3.4 GHz assignment stage option list” and each block or pair of blocks of numbered 3.4 GHz 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 is a bidder and did apply for a replacement licence

78.—(1) This regulation applies where the pre-existing licence holder is a bidder and did apply for a replacement licence.

(2) The 3.4 GHz assignment stage options for the pre-existing licence holder which applied for a replacement licence shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block is equal to the sum of the number of 3.4 GHz lots won by the pre-existing licence holder as a consequence of bidding in the principal stage (the “additional 3.4 GHz lots”), if any, and the number eight; and
- (b) if the pre-existing licence holder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
 - (i) each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder’s winning principal stage bids for 3.4 GHz lots; and
 - (ii) the 3.4 GHz lots not assigned to the pre-existing licence holder or any other bidder (the “leftover 3.4 GHz lots”) would form a single block of numbered 3.4 GHz lots.

(3) The 3.4 GHz assignment stage options for a bidder which is not the pre-existing licence holder shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block is equal to the number of that bidder’s winning principal stage bids for 3.4 GHz lots; and
- (b) if that bidder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
 - (i) subject to sub-paragraph (ii), each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder’s winning principal stage bids for 3.4 GHz lots;

- (ii) the pre-existing licence holder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the sum of the number of additional 3.4 GHz lots, if any, and the number eight; and
- (iii) the leftover 3.4 GHz lots would form a single block of numbered 3.4 GHz lots.

Preparing a 3.4 GHz assignment stage option list for each bidder if the pre-existing licence holder is not a bidder or is a bidder but did not apply for a replacement licence

79.—(1) This regulation applies where the pre-existing licence holder—

- (a) is not a bidder; or
- (b) is a bidder but did not apply for a replacement licence.

(2) A bidder's 3.4 GHz assignment stage options shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
- (b) the block does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38 listed in Column (1) of Table 2 of Schedule 1; and
- (c) if that bidder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
 - (i) each other bidder could be assigned 3.4 GHz lots contained in a block that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) and (b); and
 - (ii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where 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 3.4 GHz assignment stage options which satisfy the conditions set out in paragraph (2), then the bidder's 3.4 GHz assignment stage options shall be each of those blocks or pairs of blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block or pair of blocks is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
- (b) the block or pair of blocks does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38 listed in Column (1) of Table 2 of Schedule 1;
- (c) where the number of the bidder's winning principal stage bids for 3.4 GHz lots is less than eight, the numbered 3.4 GHz lots contained in the option together form a single block of numbered 3.4 GHz lots;
- (d) where the number of the bidder's winning principal stage bids for 3.4 GHz lots is eight or more, the numbered 3.4 GHz lots contained in the option are included in at most two blocks of numbered 3.4 GHz lots, where—
 - (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 lots contained in each of the two separate blocks of numbered 3.4 GHz lots is at least four; and
- (e) if that bidder were assigned the 3.4 GHz lots contained in the block or pair of blocks, the following conditions would be satisfied—
 - (i) each other bidder could be assigned 3.4 GHz lots contained in a block or pair of blocks that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) to (d);
 - (ii) the number of separate blocks of numbered 3.4 GHz lots assigned to all bidders considered together is no more than necessary to meet the conditions set out in sub-paragraphs (a) to (e)(i); and

- (iii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where 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.

(4) If there are no 3.4 GHz assignment stage options which satisfy the conditions set out in paragraph (2) or (3) above, then the bidder's 3.4 GHz assignment stage options shall be each of those blocks or pairs of blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block or pair of blocks is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
- (b) the block or pair of blocks does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38 listed in Column (1) of Table 2 of Schedule 1;
- (c) the numbered 3.4 GHz lots are included in at most two separate blocks of numbered 3.4 GHz lots, where 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
- (d) if that bidder were assigned the 3.4 GHz lots contained in the block or pair of blocks, the following conditions would be satisfied—
 - (i) each other bidder could be assigned 3.4 GHz lots contained in a block or pair of blocks that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) to (c);
 - (ii) the number of separate blocks of numbered 3.4 GHz lots assigned to all bidders considered together is no more than necessary to meet the conditions set out in sub-paragraphs (a) to (d)(i); and
 - (iii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where 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

80.—(1) In order to 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 total 3.4 GHz base price A and the total 3.4 GHz base price B for that bidder's winning principal stage bids for 3.4 GHz lots, for one or more licences that authorise the use of the frequencies corresponding to the block or pair of blocks of numbered 3.4 GHz 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) A 3.4 GHz assignment stage bid is a valid 3.4 GHz assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum required under regulation 89 by the deadline specified by OFCOM under regulation 89.

(5) Where a bidder does not make a valid 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option that bidder will be deemed to have made a valid 3.4 GHz assignment stage bid with a value of zero pounds for that 3.4 GHz assignment stage option.

Determination of the winning 3.4 GHz assignment stage bids

81.—(1) OFCOM shall determine the winning 3.4 GHz assignment stage bids in accordance with this regulation, regulation 82 and regulation 83 after the deadline for paying the required assignment stage deposit under regulation 89.

(2) 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.

(3) The winning combination of valid 3.4 GHz assignment stage bids shall be the valid combination of 3.4 GHz assignment stage bids, determined in accordance with regulation 82 or regulation 83, having the highest total value of amounts bid.

(4) 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 for which the value is equal highest to determine the winning combination of valid 3.4 GHz assignment stage bids.

Valid combinations of 3.4 GHz assignment stage bids where the pre-existing licence holder is a bidder and did apply for a replacement licence

82.—(1) This regulation applies where the pre-existing licence holder is a bidder and did apply for a replacement licence.

(2) 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 for 3.4 GHz lots;
- (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 78;
- (c) no numbered 3.4 GHz lot is included in more than one of the 3.4 GHz assignment stage bids included in the combination of valid 3.4 GHz assignment stage bids; and
- (d) the numbered 3.4 GHz lots not included in that combination of valid 3.4 GHz assignment stage bids together form a single block of numbered 3.4 GHz lots.

Valid combinations of 3.4 GHz assignment stage bids where the pre-existing licence holder is not a bidder or is a bidder but did not apply for a replacement licence

83.—(1) This regulation applies where the pre-existing licence holder—

- (a) is not a bidder; or
- (b) is a bidder but did not apply for a replacement licence.

(2) 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 for 3.4 GHz lots;
- (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 79;
- (c) no numbered 3.4 GHz 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 lots not included in that combination of valid assignment stage bids together form at most one single block of numbered 3.4 GHz lots in the lower 3.4 GHz frequency range and at most one single block of numbered 3.4 GHz lots in the upper 3.4 GHz frequency range.

Determination of 3.4 GHz additional prices

84. 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 bidder in accordance with Schedule 6.

CHAPTER 6

Procedure and further deposit for assignment stage

Notice to bidders before the assignment stage round

85. 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; 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

86.—(1) A bidder must submit the completed assignment stage form to OFCOM by using the electronic auction system, except as provided for in regulation 87.

(2) The completed assignment stage form must be received by OFCOM by the time notified to bidders under regulation 85(b) as the end of the assignment stage round.

Alternative method for submission of assignment stage form

87.—(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

88.—(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, 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 74(5) or regulation 80(5) shall apply.

Required assignment stage deposit

89.—(1) A further sum in pounds must be paid into OFCOM's bank account, with accompanying information which identifies the bidder, by a deadline specified by OFCOM ("required assignment stage deposit").

(2) The required 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 the sum of—

- (a) the bidder's total 2.3 GHz base price A;
- (b) the bidder's total 3.4 GHz base price A;

- (c) one half of the bidder's total 2.3 GHz base price B;
- (d) one half of the bidder's total 3.4 GHz base price B;
- (e) the amount which is the bidder's highest 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option; and
- (f) the amount which is the bidder's highest 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option.

Notification of results of the assignment stage

90. After 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, determined in accordance with Schedule 5 or 6, for each winning assignment stage bid made by the bidder.

PART 8

Grant Stage

CHAPTER 1

Licences available and the determination of licence fees and precise frequencies for particular licences

Interpretation

91. In these Regulations—

- (a) a “2.3 GHz licence” is a licence that authorises the use of particular frequencies corresponding to a block of such number of 2.3 GHz lots as that bidder won in accordance with regulation 38;
- (b) a “2.3 GHz withdrawn lot licence” is a licence that authorises the use of particular frequencies corresponding to a block of such number of 2.3 GHz lots as that bidder won in accordance with regulation 39 (following the withdrawal of standing high bid status);
- (c) a “3.4 GHz licence” is a licence that authorises the use of particular frequencies corresponding to a block or pair of blocks (as the case may be) of such number of 3.4 GHz lots as that bidder won in accordance with regulation 38;
- (d) a “3.4 GHz withdrawn lot licence” is a licence that authorises the use of particular frequencies corresponding to a block or pair of blocks (as the case may be) of such number of 3.4 GHz lots as that bidder won in accordance with regulation 40 (following the withdrawal of standing high bid status).

Determination of licences, licence fees and frequencies associated with particular licences

92. After notification of the results of the assignment stage under regulation 90, OFCOM shall determine—

- (a) the licences which may be granted in accordance with regulation 93; and
- (b) for each licence—
 - (i) the licence fee payable to OFCOM, in accordance with regulations 94 to 98; and
 - (ii) the particular frequencies, in accordance with regulations 99 to 101.

Licences which may be granted under this award process

93. The licences which may be granted to a bidder under this award process are—

- (a) for a bidder which won 2.3 GHz lots in accordance with regulation 38, a 2.3 GHz licence;
- (b) for a bidder which won 2.3 GHz lots in accordance with regulation 39, a 2.3 GHz withdrawn lot licence;
- (c) for a bidder which won 3.4 GHz lots in accordance with regulation 38, a 3.4 GHz licence;
- (d) for a bidder which won 3.4 GHz lots in accordance with regulation 40, a 3.4 GHz withdrawn lot licence; and
- (e) where the pre-existing licence holder is a bidder and did apply for a replacement licence, a replacement licence.

Licence fee payable by a winning bidder for a 2.3 GHz licence

94. The licence fee payable by a winning bidder for a 2.3 GHz licence shall be an amount equal to the sum of—

- (a) that bidder's total 2.3 GHz base price A; and
- (b) that bidder's 2.3 GHz additional price.

Licence fee payable by a winning bidder for a 2.3 GHz withdrawn lot licence

95. The licence fee payable by a winning bidder for a 2.3 GHz withdrawn lot licence shall be an amount equal to the sum of—

- (a) that bidder's total 2.3 GHz base price B; and
- (b) except where that bidder also wins 2.3 GHz lots in accordance with regulation 38, that bidder's 2.3 GHz additional price.

Licence fee payable by a winning bidder for a 3.4 GHz licence

96. The licence fee payable by a winning bidder for a 3.4 GHz licence shall be an amount equal to the sum of—

- (a) that bidder's total 3.4 GHz base price A; and
- (b) that bidder's 3.4 GHz additional price.

Licence fee payable by a winning bidder for a 3.4 GHz withdrawn lot licence

97. The licence fee payable by a winning bidder for a 3.4 GHz withdrawn lot licence shall be an amount equal to the sum of—

- (a) that bidder's total 3.4 GHz base price B; and
- (b) except where that bidder also wins 3.4 GHz lots in accordance with regulation 38, that bidder's 3.4 GHz additional price.

Licence fee payable by the pre-existing licence holder for a replacement licence

98. The licence fee payable by the pre-existing licence holder for a replacement licence shall be—

- (a) where the pre-existing licence holder does not win any additional 3.4 GHz lots in the principal stage, the amount which is the pre-existing licence holder's 3.4 GHz additional price; or
- (b) where the pre-existing licence holder wins additional 3.4 GHz lots in the principal stage, zero pounds.

Particular frequencies to be included in 2.3 GHz licences and 2.3 GHz withdrawn lot licences

99.—(1) Where a winning bidder won 2.3 GHz lots in accordance with either regulation 38 or 39 (but not both), any 2.3 GHz licence or 2.3 GHz withdrawn lot licence granted to that bidder shall authorise 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 (“2.3 GHz winning option”).

- (2) Where a winning bidder won 2.3 GHz lots in accordance with both regulations 38 and 39—
- (a) the 2.3 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—
 - (i) includes such number of lots as won in accordance with regulation 38; and
 - (ii) comprises the higher frequencies included in that bidder’s 2.3 GHz winning option; and
 - (b) the 2.3 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—
 - (i) includes such number of lots as won in accordance with regulation 39; and
 - (ii) comprises the lower frequencies included in that bidder’s 2.3 GHz winning option.

Particular frequencies to be included in 3.4 GHz licences and 3.4 GHz withdrawn lot licences granted to a winning bidder where the pre-existing licence holder is not a bidder or where the pre-existing licence holder is a bidder and did not apply for a replacement licence

100.—(1) This regulation applies in respect of the grant of a 3.4 GHz licence or a 3.4 GHz withdrawn lot licence to—

- (a) each winning bidder for 3.4 GHz lots other than the pre-existing licence holder; and
- (b) where it is a bidder and did not apply for a replacement licence but makes one or more winning principal stage bids for 3.4 GHz lots, the pre-existing licence holder.

(2) Where a winning bidder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 38 or 40 (but not both), any 3.4 GHz licence or 3.4 GHz withdrawn lot licence granted to that bidder shall authorise 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 (“3.4 GHz winning option”).

(3) Where a winning bidder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 38 and 40—

- (a) the 3.4 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the block or pair of blocks which—
 - (i) includes such number of lots as won in accordance with regulation 38; and
 - (ii) comprises the higher frequencies included in that bidder’s 3.4 GHz winning option; and
- (b) the 3.4 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block or pair of blocks which—
 - (i) includes such number of lots as won in accordance with regulation 40; and
 - (ii) comprises the lower frequencies included in that bidder’s 3.4 GHz winning option.

Particular frequencies to be included in any 3.4 GHz licence, 3.4 GHz withdrawn lot licence and replacement licence granted to the pre-existing licence holder where it is a bidder and applied for a replacement licence

101.—(1) This regulation applies in respect of the grant to the pre-existing licence holder where it is a bidder and applied for a replacement licence, of a 3.4 GHz licence, a 3.4 GHz withdrawn lot licence and a replacement licence under this award process where that pre-existing licence holder has applied for a replacement licence.

(2) Where the pre-existing licence holder to which this regulation applies did not win any additional 3.4 GHz lots in the principal stage, any replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to its 3.4 GHz winning option.

(3) Where the pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 38 or 40 (but not both)—

- (a) the replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to the block which comprises the higher frequencies included in that pre-existing licence holder's 3.4 GHz winning option; and
- (b) the 3.4 GHz licence or 3.4 GHz withdrawn lot licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block of additional 3.4 GHz lots which comprises the lower frequencies included in that pre-existing licence holder's 3.4 GHz winning option.

(4) Where the pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 38 and 40—

- (a) the replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to the block which comprises the higher frequencies included in that pre-existing licence holder's 3.4 GHz winning option;
- (b) the 3.4 GHz licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block which—
 - (i) includes such number of lots as won in accordance with regulation 38; and
 - (ii) comprises the frequencies immediately below the block included in the replacement licence referred to in sub-paragraph (a); and
- (c) the 3.4 GHz withdrawn lot licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block which—
 - (i) includes such number of lots as won in accordance with regulation 40; and
 - (ii) comprises the lower frequencies included in that pre-existing licence holder's 3.4 GHz winning option.

CHAPTER 2

Withdrawn lot licences

Acceptance or refusal of the withdrawn lot licence

102.—(1) Following the determination by OFCOM of the licences which may be granted to each winning bidder, each winning bidder's licence fees and the particular frequencies, OFCOM shall notify each bidder that won 2.3 GHz lots or 3.4 GHz lots in accordance with regulations 39 or 40 (following the withdrawal of standing high bid status) of—

- (a) the licence fee payable by that bidder to OFCOM in respect of its withdrawn lot licences, as determined in accordance with regulations 95 and 97; and
- (b) the particular frequencies the use of which would be authorised by those withdrawn lot licences, as determined in accordance with regulations 99 to 101.

(2) Each winning bidder so notified by OFCOM must, by a deadline specified by OFCOM, indicate whether or not it wishes to accept the withdrawn lot licences.

(3) Where a winning bidder has won both 2.3 GHz lots and 3.4 GHz lots in accordance with regulations 39 and 40, that bidder must indicate either—

- (a) that it wishes to accept withdrawn lot licences for both lot types; or
- (b) that it does not wish to accept withdrawn lot licences for both lot types.

(4) Where a winning bidder does not notify OFCOM in accordance with paragraph (2), that bidder shall be deemed to have indicated that it does not wish to accept any withdrawn lot licences.

Refusal payment for withdrawn lot licences

103.—(1) Where a winning bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, OFCOM shall determine the amount payable by that bidder in respect of the withdrawn lot licences that it has refused (“refusal payment”) in accordance with paragraph (2).

- (2) The refusal payment shall be an amount equal to the sum of—
- (a) the 2.3 GHz refusal payment, which is the amount payable by a winning bidder in respect of any 2.3 GHz withdrawn lot licence that it does not wish to accept, determined in accordance with paragraph (3); and
 - (b) the 3.4 GHz refusal payment, which is the amount payable by a winning bidder in respect of any 3.4 GHz withdrawn lot licence that it does not wish to accept, determined in accordance with paragraph (4).
- (3) The amount referred to in paragraph (2)(a) shall be an amount equal to the sum of—
- (a) one half of that bidder’s total 2.3 GHz base price B; and
 - (b) except where that bidder also wins 2.3 GHz lots in accordance with regulation 38, that bidder’s 2.3 GHz additional price.
- (4) The amount referred to in paragraph (2)(b) shall be an amount equal to the sum of—
- (a) one half of that bidder’s total 3.4 GHz base price B; and
 - (b) except where that bidder also wins 3.4 GHz lots in accordance with regulation 38, that bidder’s 3.4 GHz additional price.

CHAPTER 3

Total auction sum

Determination of the total auction sum payable by winning bidders to OFCOM

104.—(1) Following the determination of the refusal payment (if any), OFCOM shall determine the total auction sum payable by each winning bidder in accordance with paragraph (2).

- (2) The total auction sum payable by a winning bidder shall be the sum of—
- (a) for that winning bidder’s 2.3 GHz licence (if any), the licence fee determined in accordance with regulation 94;
 - (b) for that winning bidder’s 2.3 GHz withdrawn lot licence (if any) —
 - (i) the licence fee determined in accordance with regulation 95; or
 - (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, the 2.3 GHz refusal payment determined in accordance with regulation 103(3);
 - (c) for that winning bidder’s 3.4 GHz licence (including for a 3.4 GHz licence for additional 3.4 GHz lots (if any)), the licence fee determined in accordance with regulation 96; and
 - (d) for that winning bidder’s 3.4 GHz withdrawn lot licence (including for a 3.4 GHz withdrawn lot licence for additional 3.4 GHz lots (if any)) —
 - (i) the licence fee determined in accordance with regulation 97; or
 - (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, the 3.4 GHz refusal payment determined in accordance with regulation 103(4).
 - (e) for that winning bidder’s replacement licence (if any), the licence fee determined in accordance with regulation 98.

Notification of the total auction sum payable by winning bidders to OFCOM

105. Following the determination of the total auction sum payable by each winning bidder to OFCOM in accordance with regulation 104, OFCOM shall notify each winning bidder of the total auction sum payable by that winning bidder to OFCOM.

Further payment where the amount of a winning bidder's deposit is less than its total auction sum

106. Where, after the notification given in accordance with regulation 105, the total amount that a winning bidder has on deposit is an amount that is less than the total auction sum payable by that bidder to OFCOM, the bidder must, by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the bidder, the sum in pounds which is the difference between such amount and the amount the bidder has on deposit.

CHAPTER 4

Grant of licences

Entitlement to the grant of licences

107.—(1) Where, following the passing of the deadline under regulation 106, the total amount that a winning bidder has on deposit is an amount that is equal to or more than the total auction sum payable by that bidder to OFCOM, OFCOM shall grant to that bidder the licences referred to in regulation 108.

(2) Subject to paragraph (3), where, following the passing of the deadline under regulation 106, the amount of the deposit of a winning bidder is less than the total auction sum payable by that bidder to OFCOM, that bidder—

- (a) 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 that deposit; and
- (b) shall remain liable to pay the amount which is the difference (if any) between—
 - (i) the amount which is the total auction sum payable by that bidder to OFCOM; and
 - (ii) the amount the bidder has on deposit.

(3) Where—

- (a) the pre-existing licence holder applies for a replacement licence; and
- (b) following the passing of the deadline under regulation 106, the amount of the deposit of the pre-existing licence holder is less than the total auction sum payable by the pre-existing licence holder to OFCOM,

the pre-existing licence holder will remain entitled to the grant of a replacement licence (but no other licence) under these Regulations.

Grant of licences

108. The licences referred to in regulation 107(1) are—

- (a) where the winning bidder won 2.3 GHz lots in accordance with regulation 38, a 2.3 GHz licence which authorises the use of the frequencies determined in accordance with regulation 99;
- (b) where the winning bidder won 2.3 GHz lots in accordance with regulation 39 (following the withdrawal of standing high bid status) and has indicated that it wishes to accept a 2.3 GHz withdrawn lot licence in accordance with regulation 102, a 2.3 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 99;

- (c) where a winning bidder won 3.4 GHz lots in accordance with regulation 38, a 3.4 GHz licence which authorises the use of the frequencies determined in accordance with regulation 100 or 101;
- (d) where a winning bidder won 3.4 GHz lots in accordance with regulation 40 (following the withdrawal of standing high bid status) and has indicated that it wishes to accept a 3.4 GHz withdrawn lot licence in accordance with regulation 102, a 3.4 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 100 or 101; and
- (e) where the pre-existing licence holder is a bidder and did apply for a replacement licence, a replacement licence which authorises the use of the frequencies determined in accordance with regulation 101.

CHAPTER 5

Completion of the award process

Refunds

109. Where, following the grant of licences, the total amount a bidder has on deposit at that time is an amount that is greater than the total auction sum payable by that bidder to OFCOM, OFCOM shall refund to that bidder a sum in pounds which is the difference between—

- (a) the amount which is the total auction sum payable by that bidder to OFCOM (if any); and
- (b) the amount the bidder has on deposit.

Notification to bidders following the grant of licences

110. Following the grant of licences and the refund (if any) of deposits, 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) the frequencies in respect of which the licences were granted; and
- (b) the licence fees paid, indicating the total base prices and the additional prices.

Completion of the award process

111. OFCOM shall complete the award process by publishing on OFCOM's website—

- (a) the names of the winning bidders to whom licences were granted, and, in relation to each of them—
 - (i) the frequencies in respect of which the licences were granted; and
 - (ii) the licence fees paid;
- (b) the names of the winning bidders that did not wish to accept withdrawn lot licences in accordance with regulation 102 and, in relation to each of them—
 - (i) the frequencies in respect of which, if the withdrawn lot licences had been accepted, those withdrawn lot licences would have been granted; and
 - (ii) the refusal payment paid.
- (c) the names of any winning bidders who, following the passing of the deadline under regulation 106, had an amount on deposit which is less than the total auction sum payable by them to OFCOM, and, in relation to each of them—
 - (i) the frequencies in respect of which, if they held on deposit an amount equal to the total auction sum, licences would have been granted; and
 - (ii) the total auction sum payable to OFCOM.

- (d) details of all valid principal stage bids, valid withdrawals of standing high bid status, and valid assignment stage bids made by each bidder, and occurrences of an eligibility event in respect of each bidder.

PART 9

Activity rules

Forfeit of deposit and exclusion from award process

112. 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 115 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process or would affect that bidder's 2.3 GHz bid **limit or overall bid constraint**—

- (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

113.—(1) Subject to regulation 114, where a bidder is excluded from the award process under regulation 112 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 after 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) Subject to regulation 114, where a bidder is excluded from the award process under regulation 112 during the assignment stage—

- (a) OFCOM shall determine whether it should disregard the bids made in any principal stage round prior to the exclusion in accordance with paragraphs (1) and (2); and
- (b) all of the assignment stage bids made by the bidder shall not be taken into consideration for the purposes of determining—
 - (i) the winning assignment stage bids under regulations 75 and 81;
 - (ii) the additional price payable by a winning bidder under regulations 76 and 84.

Exclusion of the pre-existing licence holder

114. (1) Where the pre-existing licence holder applies for a replacement licence and is excluded from the award process under regulation 26(8) or 112 during the principal or assignment stage, OFCOM shall disregard the bids made in all principal and assignment stage rounds and rerun the award process from the start of the first principal stage round.

(2) Where OFCOM reruns the award process from the start of the first principal stage round in accordance with paragraph (1) above, the pre-existing licence holder shall not participate in the principal stage or the assignment stage of that award process and shall be deemed to have not applied for a replacement licence in that award process.

(3) Where a pre-existing licence holder has applied for a replacement licence but is excluded from the award process under these Regulations, OFCOM will notify the other bidders of that fact.

Events

115.—(1) The events referred to in regulation 112 are the events in paragraph (2) and the events in paragraph (3).

(2) Events in relation to an applicant or bidder 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—
 - (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—
 - (i) a person ceasing to be a member of that bidder group;
 - (ii) a person joining that bidder group under the procedure in regulation 10(3); or
 - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

(3) Events in relation to a bidder (but not an applicant) are—

- (a) a change, after OFCOM has recorded that bidder's existing spectrum holdings under regulation 19, to the existing spectrum holdings of a bidder or, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) except insofar as the change is a divestment of a part of or the whole of the existing spectrum holdings; and
- (b) any person which has existing spectrum holdings which was not at the time OFCOM recorded the bidder's existing spectrum holdings under regulation 19 a person referred to in regulation 4(3)(a)(iii) becoming such a person during the award process.

PART 10

MISCELLANEOUS

General power of exclusion

116. 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 12(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

117. 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

118.—(1) Subject to regulations 119 and 120, 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

119.—(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 Parts 6 and 7 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

120.—(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 most recent round.

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Parts 6 and 7 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 the first principal stage round.

Refunds

121. 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

122. 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 Regulations 2(2), 2(3), 2(4) and 2(5)

Lots

In these Regulations—

- (a) “2.3 GHz lot” means any of the four numbered 2.3 GHz 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 lot” means any of the thirty-eight 3.4 GHz lots listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table;
- (c) “lot” means a 2.3 GHz lot or a 3.4 GHz lot;
- (d) a reference to “lot type” shall be construed as a reference to either of the two different lot types in paragraphs (a) and (b);
- (e) a reference to a numbered 2.3 GHz lot or a numbered 3.4 GHz 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 lots or numbered 3.4 GHz 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 lots numbered 1 to 14 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 lots numbered 19 to 34 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 lots</i>	<i>Frequencies (MHz)</i>
2.3 GHz lot 1	2350–2360
2.3 GHz lot 2	2360–2370
2.3 GHz lot 3	2370–2380
2.3 GHz lot 4	2380–2390

Table 2

<i>Column 1</i>	<i>Column 2</i>
<i>3.4 GHz lots</i>	<i>Frequencies (MHz)</i>
3.4 GHz lot 1	3410–3415
3.4 GHz lot 2	3415–3420
3.4 GHz lot 3	3420–3425
3.4 GHz lot 4	3425–3430
3.4 GHz lot 5	3430–3435
3.4 GHz lot 6	3435–3440
3.4 GHz lot 7	3440–3445
3.4 GHz lot 8	3445–3450
3.4 GHz lot 9	3450–3455
3.4 GHz lot 10	3455–3460
3.4 GHz lot 11	3460–3465
3.4 GHz lot 12	3465–3470
3.4 GHz lot 13	3470–3475
3.4 GHz lot 14	3475–3480
3.4 GHz lot 15	3480–3485
3.4 GHz lot 16	3485–3490
3.4 GHz lot 17	3490–3495
3.4 GHz lot 18	3495–3500
3.4 GHz lot 19	3500–3505
3.4 GHz lot 20	3505–3510
3.4 GHz lot 21	3510–3515
3.4 GHz lot 22	3515–3520
3.4 GHz lot 23	3520–3525
3.4 GHz lot 24	3525–3530
3.4 GHz lot 25	3530–3535
3.4 GHz lot 26	3535–3540
3.4 GHz lot 27	3540–3545
3.4 GHz lot 28	3545–3550
3.4 GHz lot 29	3550–3555
3.4 GHz lot 30	3555–3560
3.4 GHz lot 31	3560–3565
3.4 GHz lot 32	3565–3570
3.4 GHz lot 33	3570–3575
3.4 GHz lot 34	3575–3580
3.4 GHz lot 35	3580–3585
3.4 GHz lot 36	3585–3590
3.4 GHz lot 37	3590–3595
3.4 GHz 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 2017 ("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 3 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 12 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, 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, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure—

- (i) is or was to a member of the applicant's applicant group;
 - (ii) is or was to OFCOM;
 - (iii) is or was to a provider of finance for the purpose of raising finance for the applicant's application; or
 - (iv) is or was to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (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. Existing spectrum holdings

Confirm that the applicant has provided the details of existing spectrum holdings required under regulation 4(3)(a)(iii) of the Regulations.

8. Warranty

Provide the following warranty—

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

- (c) the persons authorised in section 2 of this application have read and understood the Regulations, the terms of the licences to be granted under the Regulations, and the Wireless Telegraphy Act 2006;
- (d) 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;
- (e) 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
- (f) the applicant is aware of the provisions in regulations 112 and 115 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.”

9. 3.4 GHz minimum requirement

Specify a 3.4GHz minimum requirement: select one (and only one) of the following options—

- a minimum requirement of two 3.4 GHz lots;
- a minimum requirement of three 3.4 GHz lots;
- a minimum requirement of four 3.4 GHz lots; or
- no minimum requirement.

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 2017 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 13 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 112 and 115 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 13, 112 and 115 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 112 and 115 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 applicant or bidder 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 7

Declaration to be made by the pre-existing licence holder

UK Broadband Limited hereby consents to the revocation of the pre-existing licence, as defined in The Wireless Telegraphy (Licence Award) Regulations 2017 (the “Regulations”), upon OFCOM granting a replacement licence, as defined in the Regulations, for a block of eight 3.4 GHz lots to UK Broadband Limited in accordance with the Regulations.

[signed by UK Broadband Limited]

SCHEDULE 5

Regulation 76

Determination of 2.3 GHz additional price

Additional price

1.—(1) OFCOM shall determine an additional price for each winning 2.3 GHz assignment stage bid 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 2.3 GHz assignment stage bid shall be no less than zero and no more than the amount of that winning 2.3 GHz assignment stage bid.

Second requirement

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

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

the combination of the reduced winning 2.3 GHz assignment stage bids submitted by the winning bidders would have been the valid combination of 2.3 GHz assignment stage bids or one of the valid combinations of 2.3 GHz assignment stage bids (as the case may be) 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 2.3 GHz assignment stage bids for the purposes of this paragraph.

Third requirement

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

Fourth requirement

5.—(1) Taking the additional prices for the winning 2.3 GHz assignment stage bids 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 2.3 GHz assignment stage bids 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 2.3 GHz 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 2.3 GHz 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 2.3 GHz assignment stage bids; and
 - (c) “ b_A ” is the amount of the winning 2.3 GHz 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 2.3 GHz assignment stage bids or one of the valid combinations of 2.3 GHz assignment stage bids (as the case may be) having the highest total value of amounts bid where, for each 2.3 GHz assignment stage bid made by the winning bidder that submitted the winning 2.3 GHz assignment stage bid for which p_A is the price, the amount of that 2.3 GHz assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.
- (5) Where the amount of a 2.3 GHz assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that 2.3 GHz assignment stage bid shall be treated as a valid 2.3 GHz assignment stage bid for the purposes of that sub-paragraph.

Interpretation

6. In this Schedule “valid combination of 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 75.

Determination of 3.4 GHz additional price

Additional price

1.—(1) OFCOM shall determine an additional price for each winning 3.4 GHz assignment stage bid 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 3.4 GHz assignment stage bid shall be no less than zero and no more than the amount of that winning 3.4 GHz assignment stage bid.

Second requirement

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

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

the combination of the reduced winning 3.4 GHz assignment stage bids submitted by the winning bidders would have been the valid combination of 3.4 GHz assignment stage bids or one of the valid combinations of 3.4 GHz assignment stage bids (as the case may be) 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 3.4 GHz assignment stage bids for the purposes of this paragraph.

Third requirement

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

Fourth requirement

5.—(1) Taking the additional prices for the winning 3.4 GHz assignment stage bids 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 3.4 GHz assignment stage bids 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 3.4 GHz 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 3.4 GHz 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 3.4 GHz assignment stage bids; and
 - (c) “ b_A ” is the amount of the winning 3.4 GHz 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 3.4 GHz assignment stage bids or one of the valid combinations of 3.4 GHz assignment stage bids (as the case may be) having the highest total value of amounts bid where, for each 3.4 GHz assignment stage bid made by the winning bidder that submitted the winning 3.4 GHz assignment stage bid for which p_A is the price, the amount of that 3.4 GHz assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.
- (5) Where the amount of a 3.4 GHz assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that 3.4 GHz assignment stage bid shall be treated as a valid 3.4 GHz assignment stage bid for the purposes of that sub-paragraph.

Interpretation

6. In this Schedule “valid combination of 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 81.

Frequency bands for existing immediately useable spectrum holdings

Frequency bands**791 to 821 MHz****832 to 862 MHz****880.1 to 914.9 MHz****925.1 to 959.9 MHz****1452 to 1492 MHz****1710.1 to 1781.7 MHz****1805.1 to 1876.7 MHz****1920.0 to 1979.7 MHz****2110.3 to 2169.7 MHz****2500 to 2570 MHz****2575 to 2595 MHz****2600 to 2615 MHz****2620 to 2690 MHz**

SCHEDULE 8

Regulation 5

Frequency bands for existing overall spectrum holdings

Frequency bands

791 to 821 MHz

832 to 862 MHz

880.1 to 914.9 MHz

925.1 to 959.9 MHz

1452 to 1492 MHz

1710.1 to 1781.7 MHz

1805.1 to 1876.7 MHz

1920.0 to 1979.7 MHz

2110.3 to 2169.7 MHz

2500 to 2570 MHz

2575 to 2595 MHz

2600 to 2615 MHz

2620 to 2690 MHz

3480-3500 MHz

3580-3600 MHz