



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: 21 November 2016
Closing date for responses: 30 January 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 proposals included in a consultation 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
- 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. This included draft auction regulations.
- 1.4 In light of:
 - 1.4.1 stakeholder responses to that Notice;
 - 1.4.2 our new proposal to impose a cap (at 255 MHz) on the amount of mobile spectrum useable immediately after the auction that may be held by a single operator;
 - 1.4.3 our reconsideration of specific details of the auction policy (including the withdrawal rule); and
 - 1.4.4 our reconsideration of the particular wording of some of the regulations,this document presents a revised draft of the proposed auction regulations (Annex 5).
- 1.5 We have published alongside this document a consultation which explains the reasoning behind our proposal to impose a spectrum cap (including a detailed competition assessment) and to amend the withdrawal rule.

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 A draft of the proposed regulations is set out at Annex 5 and their general effect is set out at Section 2 of this document.

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/>

Comments or representations

- 1.9 Comments or representations with regard to the proposed regulations are invited by **30 January 2017**. Comments should be sent to:

pssr.award@ofcom.org.uk

or by post to:

Erika Forsberg
Spectrum Group
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Telephone inquiries to: 020 7783 4360

- 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 Erika Forsberg 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 2016

The legislative framework

- 2.1 Under 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 notice of its proposal to make auction regulations in relation to the award of frequencies in the 2.3 GHz and 3.4 GHz band.
- 2.3 A draft of the regulations is set out at Annex 5.³
- 2.4 Ofcom has already notified, in October 2015, a proposal to make auction regulations in relation to these frequencies. To assist readers in understanding the key changes made by Ofcom to the proposed auction regulations since October 2015, we have highlighted these in bold text below.
- 2.5 However, by way of a summary, the key changes to the auction regulations (as against the October 2015 version) are as follows:
 - 2.5.1 we have included a proposed cap of 255 MHz on immediately useable mobile spectrum;
 - 2.5.2 we have amended the withdrawal rule such that if, as a result of a bidder withdrawing the standing high bid status of its bids, some spectrum remains unallocated, we will first offer that spectrum to that bidder. The bidder will be entitled to acquire that 'withdrawn' spectrum at twice the round price or, alternatively, to refuse it. If the bidder refuses the withdrawn spectrum, it will be liable to pay the (single) round price for that spectrum – this is known as a refusal payment. This change was made in order to ensure that Ofcom has the power, under Article 14(7) of the Wireless Telegraphy Act 2006, to require payment from a bidder in respect of withdrawn spectrum;
 - 2.5.3 we have included a new provision which prevents both UK Broadband Limited and UKB Networks Limited from participating in the auction. Only one of these parties can participate in the auction;
 - 2.5.4 as a result of our proposed amendments to the withdrawal rule, the auction regulations now provide for five different types of licence. These are standard 2.3 GHz licences, standard 3.4 GHz licences, 2.3 GHz withdrawn lot licences, 3.4 GHz withdrawn lot licences, and a replacement licence.

³ If you would like to receive a copy of the draft regulations, with all changes tracked as against the version published by Ofcom in October 2015, please contact Ofcom's PSSR team by telephone (020 7783 4360) or email (pssr.award@ofcom.org.uk)

Only UK Broadband Limited or UKB Networks Limited can apply for a replacement licence;

- 2.5.5 as a result of our proposed amendments to the withdrawal rule, we have also amended the principal and assignment stage deposit requirements such that we no longer refer to interim withdrawal liability and final withdrawal liability;
- 2.5.6 we have amended the precise wording of the auction regulations such that we refer to the withdrawal of standing high bid 'status' rather than the withdrawal of standing high 'bids';
- 2.5.7 we now refer to the "total auction sum" payable by a bidder. This encompasses a bidder's licence fees for its 'standard' licences together with that bidder's liability (if any) for withdrawn lot licences and any replacement licence. If a bidder's total auction sum is not paid by the deadline specified by Ofcom, Ofcom will not grant any licences to that bidder. One exception to this is that, if UK Broadband Limited or UKB Networks Limited applies for a replacement licence, Ofcom will grant a replacement licence to it even if it has not paid its total auction sum.

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 3-6);
 - 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 7-19);
 - 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 23-61);
 - 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 62-87); 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 88-109).
- 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 110-112).
- 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 UK Broadband Limited or UKB Networks Limited applies for a replacement licence (as further explained below), bidders will be able to bid for all frequencies within the frequency range 3410-3600 MHz, including those currently licenced to UK Broadband Limited or UKB Networks Limited. If UK Broadband Limited or UKB Networks Limited does not apply for a replacement licence or does not qualify to participate in the award, bidders will be able to bid for frequencies in the range 3410 – 3480 MHz and 3500 – 3580 MHz.

Application Stage

- 2.17 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 **We are also proposing that only one of UK Broadband Limited or UKB Networks Limited should be able to apply for any licences under the award process (regulation 5).**
- 2.23 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.**
- 2.24 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).
- 2.25 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.
- 2.26 The Application Stage also explains that one (but not both) of UK Broadband Limited or UKB Networks Limited, who are the concurrent licence holders for a licence which authorises the use of the 3480-3500 and 3580-3600 MHz bands, may apply for a replacement licence and only one may take part in the auction process more generally. 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). If UK Broadband Limited or UKB Networks Limited wishes to apply for such a replacement licence, both licence holders are required to commit to the surrender of their pre-existing licence.

Qualification Stage

- 2.27 The Qualification Stage is described in detail at Part 3 of the proposed regulations.
- 2.28 Following the date for receipt of applications, Ofcom will notify each applicant of the names and associates of each other applicant.
- 2.29 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.
- 2.30 In parallel with this exercise, Ofcom will also consider whether any members of one applicant group are also members of another applicant group.
- 2.31 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).
- 2.32 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.
- 2.33 Ofcom then considers whether each applicant is qualified to participate in the award process.
- 2.34 Each applicant considered fit to hold a licence (in accordance with the provisions of regulation 11) and not having an overlap in its applicant group with another applicant, will qualify to participate in the award process. However, **regulation 12 provides specifically that, if UK Broadband Limited and UKB Networks Limited both apply for a licence, they will both be disqualified from participating in the auction.**
- During the qualification stage, Ofcom may request an applicant to provide additional information or documentation by a specified deadline. In making its determination of whether an applicant is fit to hold a licence, Ofcom will take into account any failure by the applicant to provide the additional information by the relevant deadline.
 - In addition, in making its determination of whether an applicant is fit to hold a licence, Ofcom will take into account a number of factors, including, for example, any action that is likely to distort the outcome of the award process.
- 2.35 Ofcom will notify each applicant whether it has qualified to bid in the award process, including the reasons an applicant has not qualified.

- 2.36 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.
- 2.37 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.
- 2.38 After the last day for withdrawal, Ofcom will determine and publish the number and names of bidders. Ofcom will also announce whether UK Broadband Limited or UKB Networks Limited applied for a replacement licence.

Eligibility and deposit before the first round of the principal stage

- 2.39 Before the principal stage commences, bidders can pay an additional deposit (regulation 16) which will be taken into account by Ofcom in accordance with regulation 17 for calculating the bidder's eligibility limit for the first principal stage round.
- 2.40 The concept of an "eligibility limit" is used in the proposed regulations to determine how many lots a bidder may bid for (regulations 45 to 49). This is a separate concept from the 2.3 GHz bid limit which is discussed below. During the principal stage rounds, the eligibility points used by a bidder must not exceed the bidder's eligibility limit.
- 2.41 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.
- 2.42 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

- 2.43 **Ofcom will record the existing spectrum holdings relevant to each bidder after the deadline for additional deposits has passed (regulation 18 and Schedule 7). Ofcom will then determine, on the basis of the recorded spectrum holdings, the maximum number of bids for 2.3 GHz lots, if any, each bidder may make for during the principal stage. This will be a number between zero and four. We have separately published a consultation document which explains why we think it is appropriate and proportionate to impose this cap.**
- 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.⁴

- 2.46 **As with previous spectrum awards, a bidder's 2.3 GHz bid limit 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. 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 110 and 112).**

Participation by UK Broadband Limited or UKB Networks Limited

- 2.47 **As explained above, we are proposing that only one of UK Broadband Limited or UKB Networks Limited should be able to apply for a licence (and qualify) under the award process (regulations 5 and 12).**
- 2.48 Part 5 of the proposed regulations explains what happens if UK Broadband Limited or UKB Networks Limited applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded. In such a case, while only thirty 3.4 GHz frequency lots are available in the principal stage, UK Broadband Limited or UKB Networks Limited (as applicable) will automatically win a further eight 3.4 GHz lots. 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 UK Broadband Limited and UKB Networks Limited.
- 2.49 If UK Broadband Limited or UKB Networks Limited 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

- 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

⁴ 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 19(2)(a)). This concept is also used when calculating 2.3 GHz bid limits of one, two, three and four (regulation 19(2)(b) to (e)).

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.⁵

- 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 41, 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 For the first principal stage round, the prices for each of the two types of lot are set out in regulation 27.
- 2.57 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 28.
- 2.58 The principal stage rounds continue one after another until there is a round where:
- 2.58.1 no bids are submitted by any bidders;
 - 2.58.2 no bidders withdraw the standing high bid status of bids made by them in previous rounds; and
 - 2.58.3 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.

Bids with standing high bid status

- 2.59 Following the end of each principal stage round, the auctioneer determines standing high bids for each lot.
- 2.60 Standing high bids are determined for each lot category independently. The process for determining standing high bids is specified in regulations 31 to 34.

Eligibility limit for the subsequent principal stage rounds

- 2.61 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 48. The eligibility limit is equivalent to the eligibility points used

⁵ In the October 2015 version of the proposed Auction Regulations, we referred to the concepts of "using a waiver" and "a default waiver". Whilst our underlying policy remains the same, we have amended the precise drafting of the proposed regulations and now refer to "eligibility events" occurring (see regulation 49).

by the bidder in the preceding round unless an eligibility event has occurred in respect of that round.

2.62 An eligibility event will occur where:

2.62.1 a bidder indicates on its principal stage form that it would like to carry forward its eligibility limit (regulations 45 and 49(a)); or

2.62.2 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 49(b)).

2.63 A bidder's eligibility limit can be carried forward up to three times during the principal stage (regulation 49). 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.

2.64 The eligibility points used by a bidder in a given round are calculated by reference to either:

2.64.1 the number of bids made by that bidder for a type of lot in that round; or

2.64.2 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.

2.65 A bid for a 2.3 GHz lot (or a standing high bid for a 2.3 GHz lot) attracts 4 eligibility points, whereas a bid for a 3.4 GHz lot (or a standing high bid for a 3.4 GHz lot) attracts 1 eligibility point.

2.66 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

2.67 As set out in regulation 44, 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 will only ever be one partial standing high bidder in a principal stage round, in each lot type.**

2.68 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.**

Winning principal stage bids

- 2.69 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 36. In this Notice, we refer to these as “winning standing high bids”.
- 2.70 **In addition, and as set out in regulations 37 and 38, 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 - 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. We refer to these lots as “unallocated lots” in the remainder of this document, and to the bids as “winning withdrawal bids”.**
- 2.71 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. 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.**
- 2.72 Each winning bid made by a bidder in the principal stage will be assigned a base price, in accordance with regulation 39.
- 2.72.1 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.
- 2.72.2 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.
- 2.73 **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 those lots would be one half of the base price (i.e. the round price at which it made that winning bid).

Deposits during the principal stage

- 2.74 When a bidder has on deposit with Ofcom an amount which is less than its financial exposure, Ofcom may require it to increase its deposit.
- 2.75 A bidder’s financial exposure following a round corresponds to the sum of the following:
- 2.75.1 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;
- 2.75.2 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;
- 2.75.3 **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

- 2.75.4** 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.
- 2.76 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.
- 2.77 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 60.
- 2.78 Where a bidder fails to comply with a request from Ofcom (under regulation 60) 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.
- 2.79 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 2.75 and 2.76 above). It will therefore reflect:
- 2.79.1 the base price for its winning standing high bids; and
- 2.79.2 one half of the base price for its winning withdrawal bids.
- 2.80 In accordance with regulation 61, 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

- 2.81 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.
- 2.82 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

- 2.83 Part 7 of the proposed regulations sets out how radio frequencies are to be assigned to winning bidders (the "assignment stage").

- 2.84 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.
- 2.85 These assignment stage options must be consistent with the assignment stage plans considered by Ofcom.
- 2.86 For the 2.3 GHz band, Ofcom will only consider those assignment stage plans where each bidder is assigned a contiguous frequency block that corresponds to the bandwidth acquired in the principal stage, and where any lots not assigned to any bidder also form a contiguous frequency block.
- 2.87 For the 3.4 GHz band, the assignment stage plans considered by Ofcom depend on whether UK Broadband Limited or UKB Networks Limited applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded.
- 2.87.1 In the event that UK Broadband Limited or UKB Networks Limited applies for a replacement licence, qualifies to participate in the award, and is not otherwise excluded, Ofcom will consider only those assignment stage plans where each bidder is assigned a contiguous frequency block and where any lots not assigned to any bidder also form a contiguous frequency block.
- 2.87.2 In the event that UK Broadband Limited or UKB Networks Limited does not apply for a replacement licence, does not qualify to participate in the auction, or is otherwise excluded, Ofcom will prioritise assignment stage plans in which all bidders are assigned contiguous spectrum. If however there are no such assignments, Ofcom will prioritise assignment stage plans in which each bidder who receives non-contiguous frequencies obtains their frequencies in two contiguous blocks of at least 20 MHz each. If there are no such assignments, then Ofcom will only consider those assignment stage plans in which the number of winners receiving non-contiguous frequencies is minimised.

Required assignment stage deposit

- 2.88 Bids placed in the assignment stage by a bidder will only be considered valid if the bidder provides Ofcom with a deposit that covers:
- 2.88.1 the required final principal stage deposit (see paragraph 2.79 above); plus
- 2.88.2 the bidder’s highest assignment stage bid for a 2.3 GHz assignment stage option; and
- 2.88.3 the bidder’s highest assignment stage bid for a 3.4 GHz assignment stage option.
- 2.89 Where the bidder fails to do so, it shall be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options.

Determination of winning assignment stage bids and additional prices

- 2.90 Of all combinations of assignment stage options that are compatible with valid assignment stage plans, the one that yields the greatest value will be selected as the winning combination of assignment stage options.

2.91 Bidders will pay the opportunity cost of their bids, as set out in regulations 73 and 81.

Licences available under the auction

2.92 Regulation 90 sets out the five licences which Ofcom proposes to make available under the auction. These are:

2.92.1 2.3 GHz licences, which will be available to bidders which made winning *standing high bids* for 2.3 GHz lots;

2.92.2 2.3 GHz withdrawn lot licences, which will be available to bidders which made winning *withdrawal* bids for 2.3 GHz lots;

2.92.3 3.4 GHz licences, which will be available to bidders which made winning *standing high bids* for 3.4 GHz lots;

2.92.4 3.4 GHz withdrawn lot licences, which will be available to bidders which made winning *withdrawal* bids for 3.4 GHz lots; and

2.92.5 a replacement licence, which will be available if either UK Broadband Limited or UKB Networks Limited applies to participate in the auction and both consent to the revocation of their existing licence for 3.4 GHz spectrum.

2.93 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 91 to 95 set out how Ofcom will calculate individual licence fees and this is discussed in detail below. Regulations 96 to 98 explain how Ofcom will determine which frequencies should be included in the particular licences to be awarded to a bidder.

2.94 **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 99. Where a bidder fails to provide this confirmation, Ofcom will assume that that bidder wishes to refuse any withdrawn lot licences offered to it.**

2.95 **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 99 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

2.96 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 from the principal stage (see paragraph 2.72 above).

2.97 It may also reflect the bidder's 2.3 GHz or 3.4 GHz additional prices from the assignment stage round. Regulations 91 to 95 set out precise details of how to determine a bidder's licence fee.

Refusal payment

- 2.98 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.
- 2.99 Regulation 100 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 (single) 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

- 2.100 The total auction sum is the amount payable by a bidder before Ofcom will grant any licences and regulation 101 sets out how Ofcom would determine a bidder's total auction sum.
- 2.101 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.
- 2.102 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

- 2.103 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.
- 2.104 Regulation 104 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.
- 2.105 **One exception to this is where UK Broadband Limited or UKB Networks Limited 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 104 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

- 2.106 If a winning bidder has its total auction sum on deposit with Ofcom by the deadline specified under regulation 103, 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.
- 2.107 Interest, if any, will not be paid to applicants or bidders.

- 2.108 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

- 2.109 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

- 2.110 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). A list of events is set out in regulation 112, 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.

Further Consultation Question: Do you have any comments on the proposed statutory instrument set out in the notice of our proposal to make regulations in connection with the award of 2.3 and 3.4 GHz' consultation?

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 30 January 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-1/award-of-the-spectrum-bands> 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.

Erika Forsberg
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 a direct answer to the question asked in this document, which is listed 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 Erika Forsberg on 020 7783 4360.

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 question

Further Consultation Question: Do you have any comments on the proposed statutory instrument set out in the notice of our proposal to make regulations in connection with the award of 2.3 and 3.4 GHz' consultation?

Annex 5

Draft Wireless Telegraphy (Licence Award) Regulations 2016

2016 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Award) Regulations 2016

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 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.

(a) 2006 c.36.

PART 1

Introductory

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2016 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 73;
- “2.3 GHz assignment stage bid” shall be construed in accordance with regulation 69;
- “2.3 GHz assignment stage option” has the meaning given in regulation 69;
- “2.3 GHz assignment stage option list” has the meaning given in regulation 69;
- “2.3 GHz base price A” has the meaning given in regulation 39;
- “2.3 GHz base price B” has the meaning given in regulation 39;
- “2.3 GHz bid limit” has the meaning given in regulation 19;
- “2.3 GHz licence” has the meaning given in regulation 88;
- “2.3 GHz winning option” has the meaning given in regulation 96;
- “2.3 GHz withdrawn lot licence” has the meaning given in regulation 88;
- “3.4 GHz additional price” has the meaning given in regulation 81;
- “3.4 GHz assignment stage bid” shall be construed in accordance with regulation 74;
- “3.4 GHz assignment stage option” has the meaning given in regulation 74;
- “3.4 GHz assignment stage option list” has the meaning given in regulation 74;
- “3.4 GHz base price A” has the meaning given in regulation 39;
- “3.4 GHz base price B” has the meaning given in regulation 39;
- “3.4 GHz licence” has the meaning given in regulation 88;
- “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 winning option” has the meaning given in regulation 97;
- “3.4 GHz withdrawn lot licence” has the meaning given in regulation 88;
- “additional 3.4 GHz lot” means, where a pre-existing licence holder applies for a replacement licence, a 3.4 GHz lot won by that pre-existing licence holder as a consequence of bidding in the principal stage;
- “additional deposit” has the meaning given in regulation 16;
- “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 20;

“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 68;

“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 67;

“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 8;

“bidder ranking list” has the meaning given in regulation 32;

“category one bidders” has the meaning given in regulation 32;

“category two bidders” has the meaning given in regulation 32;

“category three bidder” has the meaning given in regulation 32;

“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 49;

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

“eligibility points used” shall be construed in accordance with regulation 47;

“excess demand” shall be construed in accordance with regulation 52;

“existing spectrum holdings” shall be construed in accordance with regulation 4(6);

“financial exposure” shall be construed in accordance with regulation 60;

“GHz” means gigahertz;

“grant stage” has the meaning given in regulation 20;

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

“last day for withdrawal” has the meaning given in regulation 14;

“leftover 3.4 GHz lots” has the meaning given in regulation 75;

“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;

“licence fee” shall be construed in accordance with regulations 91 to 95;

“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 33;

“pounds” means pounds sterling;

“pre-existing licence” means the licence with number 1040769 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 jointly by UK Broadband Limited and UKB Networks Limited;

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

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

“principal stage” has the meaning given in regulation 20;

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

“principal stage form” shall be construed in accordance with regulation 24;

“principal stage round” shall be construed in accordance with regulation 23;

“recorded spectrum holdings” shall be construed in accordance with regulation 18;

“refusal payment” has the meaning given in regulation 100;

“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 21;

“required assignment stage deposit” shall be construed in accordance with regulation 86;

“required final principal stage deposit” shall be construed in accordance with regulation 61;

“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;

(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.

“round event” shall be construed in accordance with regulation 26;

“round price” shall be construed in accordance with regulations 27 and 28;

“standing high bid status” shall be construed in accordance with regulations 31 to 34;

“total 2.3 GHz base price A” has the meaning given in regulation 40;

“total 2.3 GHz base price B” has the meaning given in regulation 40;

“total 3.4 GHz base price A” has the meaning given in regulation 40;

“total 3.4 GHz base price B” has the meaning given in regulation 40;

“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 auction sum” shall be construed in accordance with regulation 101;

“valid 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 71;

“valid 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 77;

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

“valid combination of 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 72;

“valid combination of 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 79 or 80;

“valid withdrawal of standing high bid status” shall be construed in accordance with regulation 24;

“valid principal stage bid” shall be construed in accordance with regulation 24;

“valid principal stage form” shall be construed in accordance with regulation 24;

“winning 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 72;

“winning 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 78;

“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 regulation 35;

“winning bidder for 3.4 GHz lots” shall be construed in accordance with regulation 35;

“winning combination of valid 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 72;

“winning combination of valid 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 78;

“winning principal stage bid” shall be construed in accordance with regulation 35 to 38;

“withdrawal of standing high bid status” shall be construed in accordance with regulation 44;

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 for a licence.
- (3) To apply for a licence, a body corporate must—
- (a) on the day or days specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day or those days specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by, and the warranty set out in, Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
 - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its applicant group, a document in the form set out in Schedule 3 which has been—
 - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
 - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; 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 any such third party;
 - (gg) any person in whom a person referred to in sub-paragraph (ff) has a material interest; and
 - (hh) any person in whom any such third party has a material interest; and
 - (b) subject to regulation 6(3), by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the applicant, an initial deposit of one hundred thousand pounds.
- (4) The 3.4 GHz minimum requirement, which may be specified by the applicant in the document referred to in paragraph (3)(a)(i), shall not be greater than four.
- (5) OFCOM shall publish the day or days, times and deadline on their website.
- (6) "Existing 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.
- (7) The details of existing spectrum holdings that are required are:
- (a) the wireless telegraphy licence number; and
 - (b) the frequencies.

Applications by a pre-existing licence holder

5. Only one pre-existing licence holder may apply to OFCOM for a licence (including a replacement licence) under this award process.

Application for a replacement licence

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

(2) To apply for a replacement licence, a pre-existing licence holder, in addition to meeting the requirements of regulation 4(3), must 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 each of the pre-existing licence holders, 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.

(3) If a pre-existing licence holder indicates that it will participate in the assignment stage only, so that it is a winning bidder only in respect of eight 3.4 GHz lots in accordance with regulation 21, the requirement to pay an initial deposit of one hundred thousand pounds under regulation 4 does not apply to that pre-existing licence holder.

PART 3

Qualification stage

CHAPTER 1

Qualification

Notification of names of applicants and associates

7.—(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

8.—(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

9.—(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 12(3), 110 and 112 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

10. 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 18, 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

11.—(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;

(a) 2003 c.21.

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

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

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

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

(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

12.—(1) Each applicant (other than a pre-existing licence holder)—

- (a) which was not disqualified under regulation 11, 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 11,

shall be qualified to participate in the award process.

(2) A pre-existing licence holder shall be qualified to participate in the award process if—

- (a) it satisfies conditions (a) and (b) in paragraph (1); and
- (b) no other pre-existing licence holder has applied for a licence under this award process.

(3) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant which was not disqualified under regulation 11 shall not be qualified to participate in the award process.

(4) Where more than one pre-existing licence holder applies for a licence under this award process, no pre-existing licence holder shall be qualified to participate in the award process.

(5) 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

13.—(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 a pre-existing licence holder qualified to participate, whether it applied for a replacement licence.

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

Withdrawal of an application

14.—(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

15.—(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 14, 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 14, 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 Parts 6 to 8 of these Regulations.

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

CHAPTER 2

Additional deposit and eligibility limit for the first principal stage round

Additional deposit before the first principal stage round

16.—(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 17 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 17 and shall record each bidder's existing spectrum holdings in accordance with regulation 18.

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

17.—(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 paragraph (1)(a) or (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

18.—(1) A bidder's recorded spectrum holdings shall be the bidder's existing spectrum holdings which have been notified by that bidder under regulation 4(3)(a)(iii), amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 8(1), 9(2), 9(3) or 10.

(2) After the recording of existing 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 110 and 112 if they apply to that change; and
- (b) the bidder's recorded spectrum holdings shall not be amended.

(3) 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

19. – (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 (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 that bidder’s recorded spectrum holdings are greater than 245 MHz;
 - (b) one bid for a 2.3 GHz lot, where that bidder’s recorded spectrum holdings are greater than 235 MHz but less than or equal to 245 MHz;
 - (c) two bids for 2.3 GHz lots, where that bidder’s recorded spectrum holdings are greater than 225 MHz but less than or equal to 235 MHz;
 - (d) three bids for 2.3 GHz lots, where that bidder’s recorded spectrum holdings are greater than 215 MHz but less than or equal to 225 MHz; or
 - (e) four bids for 2.3 GHz lots, where that bidder’s recorded spectrum holdings are equal to or less than 215 MHz.
- (3) A bidder’s 2.3 GHz bid limit shall not change during the principal stage.

PART 4

Award process

Principal stage, assignment stage and grant stage

20.—(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 winning 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 a pre-existing licence holder

Participation by a pre-existing licence holder which has applied for a replacement licence

21. A pre-existing licence holder which has applied for a replacement licence—

- (a) 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 6(2)(b); and
- (b) 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.

3.4 GHz lots available in the award process

22. 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 no pre-existing licence holder has applied for a replacement licence; or

- (b) the 3.4 GHz lots numbered 1 to 38, if a pre-existing licence holder 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

- 23.**—(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 51.
- (3) The number of principal stage rounds shall be determined by OFCOM in accordance with regulation 26.

Principal stage form

- 24.**—(1) OFCOM shall provide each bidder in the principal stage with a principal stage form.
- (2) During a principal stage round, a 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.
- (3) 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 (2);
 - (b) the bidder has submitted the form in accordance with regulation 56 or 57;
 - (c) the bidder has complied with regulations 41, 42, 43 and 46 in respect of any principal stage bids specified on the form;
 - (d) the bidder has complied with regulation 44 in respect of any withdrawal of standing high bid status indicated on the form;
 - (e) the bidder has complied with regulation 45 in respect of any request to carry forward its eligibility limit indicated on the form; and
 - (f) the bidder has complied with regulation 60(4) in respect of any deposits required during the principal stage.
- (4) A principal stage bid is a valid principal stage bid if it is specified on a valid principal stage form.
- (5) 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.

(6) Any request by a bidder to carry forward its eligibility limit is a valid request if it is indicated on a valid principal stage form.

(7) 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

25.—(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 status in accordance with regulation 37 or 38.

Number of principal stage rounds

26.—(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 35.

(3) Where OFCOM determine that there was a round event in that principal stage round, there shall be another principal stage round.

(4) There is a round event in a principal stage round where—

- (a) a bidder specifies a principal stage bid on a valid principal stage form;
- (b) a bidder indicates that it wishes to withdraw the standing high bid status of bids on a valid principal stage form;
- (c) a bidder indicates that it wishes to carry forward its eligibility limit to the next round on a valid principal stage form; or
- (d) a bidder's eligibility limit for the next round will be the same as its eligibility limit for the current round as a result of the conditions in regulation 49(2) applying.

Round prices for the first principal stage round

27. 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

28.—(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 29; and
- (b) the round price for each 3.4 GHz lot shall be determined by OFCOM in accordance with regulation 30.

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

Round price for 2.3 GHz lots

29.—(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

30.—(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

31.—(1) After the end of each principal stage round, OFCOM shall assign standing high bid status to principal stage bids for 2.3 GHz lots and 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 32;
- (b) second, identifying and ranking the bids made by those bidders in accordance with regulation 33; and
- (c) third, assigning standing high bid status to those bids in accordance with regulation 34.

Process for assigning standing high bid status: ranking the bidders

32.—(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 44.

(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

33.—(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

34.—(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.

CHAPTER 3

Winning principal stage bids

Determination of the winning principal stage bids

35.—(1) Where OFCOM have determined in accordance with regulation 26 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 36; 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 regulation 37 or 38.

(2) A bidder which makes a winning principal stage bid for 2.3 GHz lots in accordance with regulation 36 or 37 shall become a winning bidder for 2.3 GHz lots.

(3) A bidder which makes a winning principal stage bid for 3.4 GHz lots in accordance with regulation 36 or 38 shall become a winning bidder for 3.4 GHz lots.

Bids with standing high bid status becoming winning principal stage bids

36.—(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

37.—(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 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 won by a bidder under this regulation shall not exceed 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

38.—(1) Subject to paragraph (4), 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 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) Principal stage bids for 3.4 GHz lots made by a bidder to which paragraph (1) applies shall become winning principal stage bids even if the number of those 3.4 GHz lots is less than that bidder's 3.4 GHz minimum requirement.

(4) The number of principal stage bids for 3.4 GHz lots won by a bidder under this regulation shall not exceed the number calculated in accordance with paragraph (5).

(5) The number referred to in paragraph (4) 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.

Determination of base price

39.—(1) The base price for a winning principal stage bid for a 2.3 GHz lot for which the bidder is a winning bidder in accordance with regulation 36 (“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 winning principal stage bid for a 3.4 GHz lot for which the bidder is a winning bidder in accordance with regulation 36 (“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 winning principal stage bid for a 2.3 GHz lot for which the bidder is a winning bidder in accordance with regulation 37 (“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 winning principal stage bid for a 3.4 GHz lot for which the bidder is a winning bidder in accordance with regulation 38 (“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

40.—(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 36.

(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 36.

(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 37.

(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 38.

CHAPTER 4

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

SECTION 1

Number of principal stage bids

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

41. 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.

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

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

3.4 GHz Minimum requirement

43. 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

44.—(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, 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 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 in five earlier principal stage rounds.

SECTION 3

Request by a bidder to carry forward its eligibility limit

Request by a bidder to carry forward its eligibility limit

45.—(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) 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 principal stage bid for 2.3 GHz lots on its principal stage form;

- (b) specify a principal stage bid for 3.4 GHz lots on its principal stage form;
- (c) indicate on its principal stage form that it wishes to withdraw the standing high bid status of its bids for 2.3 GHz lots;
- (d) indicate on its principal stage form that it wishes to withdraw the standing high bid status of its bids for 3.4 GHz lots.

(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 49.

CHAPTER 5

Eligibility

Eligibility

46.—(1) The number of eligibility points used by a bidder in a principal stage round, calculated in accordance with regulation 47, may not exceed that bidder's eligibility limit for that round, calculated in accordance with regulation 48.

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

Eligibility points

47.—(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.

(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.

Eligibility limit

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

- (a) for the first principal stage round, in accordance with regulation 17; 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 for the current round shall be equal to the number of eligibility points used by the bidder in the most recent round, except where an eligibility event occurs in accordance with regulation 49.

(3) In relation to each principal stage round where an eligibility event occurs in accordance with regulation 49, the bidder's eligibility limit for the current round shall be the same as its eligibility limit for the most recent round.

Eligibility event

49.—(1) An eligibility event occurs 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 occur on no 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

50.—(1) Where, after the end of a principal stage round, OFCOM has notified a bidder under regulation 60(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 2.3 GHz assignment stage bid with a value of zero pounds for each of its assignment stage options in accordance with regulations 71 and 77.

(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 36.

(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 37 or 38 if, after the end of the final principal stage round, the circumstances described in regulation 37(2) or 38(2) apply.

CHAPTER 7

Information released during and following the principal stage

Notice to be given to bidders before each principal stage round

- 51.** 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

52.—(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 principal stage bids made by the bidder in the most recent round;
- (b) for each lot type, the number of principal stage bids made by the bidder 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 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 withdrew 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, as determined in accordance with regulation 60;
- (i) for 2.3 GHz lots, the amount in MHz which is the smallest strictly positive 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 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 principal stage bids made by all bidders who made bids for 2.3 GHz lots in the most recent round;
 - (b) “f” is the total number of bids with standing high bid status immediately prior to the most recent round held 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 principal stage bids made by all bidders who made bids for 3.4 GHz lots in the most recent round;
- (b) “h” is the total number of bids with standing high bid status immediately prior to the most recent round held 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

53. 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 multiple of 20 which is greater than the excess demand as determined in accordance with regulation 52.

Notification of results of the principal stage to bidders

54. After the end of the final principal stage round, and after the determination of the winning principal stage bids under regulations 35 to 38 and the determination of the base price for each winning principal stage bid under regulation 39, 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, and, in respect of each 2.3 GHz lot, the round price at which the winning bidder made the winning principal stage bid for the lot; and
 - (ii) the number of 3.4 GHz lots won, and, in respect of each 3.4 GHz lot, the round price at which the winning bidder made the winning principal stage bid for the lot.

Publication of results of the principal stage

55. After the notification given in accordance with regulation 54, 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, and, in respect of each 2.3 GHz lot, the round price at which the winning bidder made the winning principal stage bid for the lot; and
 - (ii) the number of 3.4 GHz lots won, and, in respect of each 3.4 GHz lot, the round price at which the winning bidder made the winning principal stage bid for the lot; 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

56.—(1) A bidder must submit the completed principal stage form to OFCOM by using the electronic auction system, except as provided for in regulation 57.

(2) The completed principal stage form must be received by OFCOM by the time notified by OFCOM under regulation 51(a) as the end of the principal stage round.

Alternative method for submission of principal stage form

57.—(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

58.—(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 24(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 not valid

59. 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

60.—(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 the bids for those lots 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 the bids for those lots 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 37 (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 the bids for those lots 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 38 (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 the bids for those lots 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 financial exposure after the end of the latest principal stage round 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, and regulation 50 shall apply.

Required final principal stage deposit

61.—(1) The required final principal stage deposit must be paid into OFCOM's bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(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; and
- (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, in accordance with regulations 71 and 77.

PART 7

Assignment stage

CHAPTER 1

Assignment stage: Preliminary

Assignment stage

62.—(1) Where there are no winning bidders following completion of the principal stage, there shall be no assignment stage and no licences shall be granted.

(2) Where there are winning bidders following completion of the principal stage, OFCOM shall assign lots in a single assignment stage round in accordance with the procedure set out in chapters 2 to 6.

CHAPTER 2

Assignment without bidding

Assignment of numbered 2.3 GHz lots without bidding

63. 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

64.—(1) Where—

- (a) a pre-existing licence holder applies for a replacement licence, and
- (b) that pre-existing licence holder is the winning bidder for all of the 3.4 GHz lots,

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

(2) Where—

- (a) neither pre-existing licence holder applies for a replacement licence;
- (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 3.4 GHz lots numbered one to fourteen and nineteen to thirty-four to that winning bidder.

(3) Where—

- (a) neither pre-existing licence holder applies for a replacement licence;
- (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

65. Except where regulation 63 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 the assignment stage round in accordance with the procedure set out in regulations 67 to 73.

Assignment of numbered 3.4 GHz lots by bidding

66. Except where regulation 64 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 67, 68 and 74 to 81.

Assignment stage round

67.—(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 82.

Assignment stage form and assignment stage bids

68.—(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 71; and
- (b) the bidder's 3.4 GHz assignment stage bids, if any, in accordance with regulation 77.

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

- (a) the bidder has complied with regulations 71(1) and (2) and 77(1) and (2) in respect of all assignment stage bids specified on the form; and
- (b) the bidder has submitted the form in accordance with regulation 83 or 84.

(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

69.—(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.

(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

70.—(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 67.

^a Under regulations 71(5) and 77(5), such a bidder will be deemed to have made assignment stage bids with a value of zero pounds.

(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—
 - (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

71.—(1) In order to make a valid 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the 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 86 by the deadline specified by OFCOM under regulation 86.

(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

72.—(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 86.

(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 70;
- (c) no numbered 2.3 GHz lot is included in more than one of the 2.3 GHz assignment stage options included in the combination of valid 2.3 GHz assignment stage bids; and
- (d) the numbered 2.3 GHz lots not included in 2.3 GHz assignment stage options included in the 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

73. 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

74.—(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.

(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 a pre-existing licence holder applies for a replacement licence

75.—(1) This regulation applies where a pre-existing licence holder applies 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 additional 3.4 GHz lots, if any, and the number eight; and
- (b) if that 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 that pre-existing licence holder or any other bidder 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; and
- (ii) the pre-existing licence holder which applied for a replacement licence 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 3.4 GHz lots not assigned to that bidder or any other bidder (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 a pre-existing licence holder does not apply for a replacement licence

76.—(1) This regulation applies where a pre-existing licence holder does 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 fifteen to eighteen and thirty-five to thirty-eight 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 fifteen to eighteen and thirty-five to thirty-eight 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 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 fifteen to eighteen and thirty-five to thirty-eight 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

77.—(1) In order to make a valid 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the 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 86 by the deadline specified by OFCOM under regulation 86.

(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

78.—(1) OFCOM shall determine the winning 3.4 GHz assignment stage bids in accordance with this regulation, regulation 79 and regulation 80 after the deadline for paying the required assignment stage deposit under regulation 86.

(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 79 or regulation 80, 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 a pre-existing licence holder applies for a replacement licence

79.—(1) This regulation applies where a pre-existing licence holder applies 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 75;
- (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 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 a pre-existing licence holder does not apply for a replacement licence

80.—(1) This regulation applies where a pre-existing licence holder does 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 76;
- (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 one single block of numbered 3.4 GHz lots in the upper 3.4 GHz frequency range.

Determination of 3.4 GHz additional prices

81. 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

82. 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

83.—(1) A bidder must submit the completed assignment stage form to OFCOM by using the electronic auction system, except as provided for in regulation 84.

(2) The completed assignment stage form must be received by OFCOM by the time notified to bidders under regulation 82(b) as the end of the assignment stage round.

Alternative method for submission of assignment stage form

84.—(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

85.—(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 71(5) or regulation 77(5) shall apply.

Required assignment stage deposit

86.—(1) The required assignment stage deposit must be paid into OFCOM's bank account, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(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

87. 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

88. 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 36;
- (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 37 (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 36;
- (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 38 (following the withdrawal of standing high bid status).

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

89. After notification of the results of the assignment stage under regulation 87, OFCOM shall determine—

- (a) the licences which may be granted in accordance with regulation 90; and
- (b) for each licence—
 - (i) the licence fee payable to OFCOM, in accordance with regulations 91 to 95; and
 - (ii) the particular frequencies, in accordance with regulations 96 to 98.

Licences which may be granted under this award process

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

- (a) for a bidder for 2.3 GHz lots won in accordance with regulation 36, a 2.3 GHz licence;
- (b) for a bidder for 2.3 GHz lots won in accordance with regulation 37, a 2.3 GHz withdrawn lot licence;
- (c) for a bidder for 3.4 GHz lots won in accordance with regulation 36, a 3.4 GHz licence;
- (d) for a bidder for 3.4 GHz lots won in accordance with regulation 38, a 3.4 GHz withdrawn lot licence; and
- (e) where a pre-existing licence holder has applied for a replacement licence, a replacement licence.

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

91. The licence fee payable by a winning bidder for a 2.3 GHz licence shall be an amount equal to the total 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

92. The licence fee payable by a winning bidder for a 2.3 GHz withdrawn lot licence shall be an amount equal to the total 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 36, that bidder's 2.3 GHz additional price.

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

93. The licence fee payable by a winning bidder for a 3.4 GHz licence shall be an amount equal to the total 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

94. The licence fee payable by a winning bidder for a 3.4 GHz withdrawn lot licence shall be an amount equal to the total 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 36, that bidder's 3.4 GHz additional price.

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

95. The licence fee payable by a 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

96.—(1) Where a winning bidder won 2.3 GHz lots in accordance with either regulation 36 or 37 (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 36 and 37—
- (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 36; 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 37; 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

97.—(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 a pre-existing licence holder; and
- (b) where it has not applied for a replacement licence, a pre-existing licence holder.

(2) Where a winning bidder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 36 or 38 (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 36 and 38—

- (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 36; 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 38; and
 - (ii) comprises the lower frequencies included in that bidder’s 3.4 GHz winning option.

Particular frequencies to be included in the 3.4 GHz licence, 3.4 GHz withdrawn lot licence and replacement licence granted to a pre-existing licence holder which applied for a replacement licence

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

(2) Where a 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 a pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 36 or 38 (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 bidder's 3.4 GHz winning option; and
- (b) the 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 block of additional 3.4 GHz lots which comprises the lower frequencies included in that bidder's 3.4 GHz winning option.

(4) Where a pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 36 and 38—

- (a) the replacement licence granted to that bidder shall authorise the use of 40 MHz corresponding to the block which comprises the higher frequencies included in that bidder's 3.4 GHz winning option;
- (b) the 3.4 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 36; 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 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 lower frequencies included in that bidder's 3.4 GHz winning option.

CHAPTER 2

Withdrawn lot licences

Acceptance or refusal or the withdrawn lot licence

99.—(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 37 or 38 (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 92 and 94; and
- (b) the particular frequencies the use of which would be authorised by those withdrawn lot licences, as determined in accordance with regulations 96 to 98.

(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 37 and 38, 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

100.—(1) Where a winning bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 99, 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 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 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 total 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 36, that bidder’s 2.3 GHz additional price.
- (4) The amount referred to in paragraph (2)(b) shall be an amount equal to the total 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 36, 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

101.—(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 91;
 - (b) for that winning bidder’s 2.3 GHz withdrawn lot licence (if any) –
 - (i) the licence fee determined in accordance with regulation 92; or
 - (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 99, the refusal payment determined in accordance with regulation 100(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 93; 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 94; or
 - (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 99, the refusal payment determined in accordance with regulation 100(4).
 - (e) for that winning bidder’s replacement licence (if any), the licence fee determined in accordance with regulation 95.

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

102. Following the determination of the total auction sum payable by each winning bidder to OFCOM in accordance with regulation 101, 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

103. Where, after the notification given in accordance with regulation 102, 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 difference between such amount and the amount the bidder has on deposit.

CHAPTER 4

Grant of licences

Grant of licences

104.—(1) Where, following the passing of the deadline under regulation 103, 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 regulations 105 and 106.

(2) Subject to paragraph (3), where, following the passing of the deadline under regulation 103, 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;
- (b) shall be deemed to have refused the licences it applied for in accordance with the procedure provided for in these Regulations; and
- (c) 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, following the passing of the deadline under regulation 103, the amount of the deposit of a pre-existing licence holder which applied for a replacement licence is less than the total auction sum payable by that pre-existing licence holder to OFCOM, that pre-existing licence holder will remain entitled to the grant of a replacement licence under these Regulations.

Grant of a replacement licence

105. Where a pre-existing licence holder applied for a replacement licence, OFCOM shall grant to that pre-existing licence holder a replacement licence which authorises the use of the frequencies determined in accordance with regulation 98.

Grant of licences other than a replacement licence

106. The licences referred to in regulation 104(1) are—

- (a) where the winning bidder won 2.3 GHz lots in accordance with regulation 36, a 2.3 GHz licence which authorises the use of the frequencies determined in accordance with regulation 96.
- (b) where the winning bidder won 2.3 GHz lots in accordance with regulation 37 (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 99, a 2.3 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 96.

- (c) where a winning bidder won 3.4 GHz lots in accordance with regulation 36, a 3.4 GHz licence which authorises the use of the frequencies determined in accordance with regulation 97 or 98.
- (d) where a winning bidder won 3.4 GHz lots in accordance with regulation 38 (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 99, a 3.4 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 97 or 98.

CHAPTER 5

Completion of the award process

Refunds

107. 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

108. 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

109. 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 99 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 103, 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

110. 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 112 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—

- (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

111.—(1) Where a bidder is excluded from the award process under regulation 110 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) Where a bidder is excluded from the award process under regulation 110 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 72 and 78;
 - (ii) the additional price payable by a winning bidder under regulations 73 and 81.

Events

112. —(1) The events referred to in regulation 110 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 9(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 18, 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 18 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

113. 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 11(1) (and notwithstanding that determination), in their opinion the applicant or bidder is not a fit and proper person to hold a licence.

(a) 2003 c.21.

Notification of exclusion of the pre-existing licence holder

114. 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.

Notification to OFCOM

115. 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

116.—(1) Subject to regulations 117 and 118, 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

117.—(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 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

118.—(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

119. 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

120. 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), (3), (4) and (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 one to fourteen listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table; and
- (h) a reference to the “upper 3.4 GHz frequency range” shall be construed as a reference to the block of 3.4 GHz lots numbered nineteen to thirty-four listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table.

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 2016 ("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 11 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 110 and 112 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

To 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; or
- a minimum requirement of four 3.4 GHz lots.

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 2016 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 12 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 110 and 112 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 12, 110 and 112 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 110 and 112 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 6

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

UK Broadband Limited and UKB Networks Limited hereby consent to the revocation of the pre-existing licence, as defined in The Wireless Telegraphy (Licence Award) Regulations 2016 (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 or UKB Networks Limited][delete as appropriate] in accordance with the Regulations.

[signed by UK Broadband Limited]

[signed by UKB Networks Limited]

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 72.

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 78.

SCHEDULE 7

Regulation 4

Frequency bands for existing spectrum holdings

Frequency bands

791 to 821 MHz

832 to 862 MHz

880.1 to 914.9 MHz

925.1 to 959.9 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