
Notice of Ofcom's proposal to make regulations for the award of 700 MHz and 3.6-3.8 GHz spectrum

Proposals to make the Auction Regulations

CONSULTATION:

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1. Summary

- 1.1 This Notice sets out proposals for making Auction Regulations in connection with an award of radio-spectrum in the 700 MHz and 3.6-3.8 GHz bands. The draft Auction Regulations arise from proposals set out in a separate document: *Award of the 700 MHz and 3.6-3.8 GHz spectrum bands: revised proposals on auction design* ('The October 2019 auction design consultation') which is also published today 28 October 2019.¹
- 1.2 We are auctioning 80 MHz of spectrum in the 700 MHz band within the frequency range 684-790 MHz, and 120 MHz of spectrum in the 3.6-3.8 GHz band between 3680 and 3800 MHz).
- 1.3 The October 2019 auction design consultation sets out proposals for conducting the auction using a Simultaneous Multiple Round Ascending (SMRA) format (see section 3). This accompanying document gives formal notice to stakeholders of our intention to give effect to those proposals by making The Wireless Telegraphy (Licence Award) Regulations 2020 (the 'Auction Regulations'). It sets out the procedures and rules that would apply to the auction should we decide to adopt the October 2019 auction design consultation proposals.
- 1.4 An initial Notice of our proposal to make regulations in connection with the award of the spectrum in the 700 MHz and 3.6-3.8 GHz bands was published on 31 January 2019. These earlier draft regulations were intended to give effect to proposals published in our consultation of December 2018 for a Combinatorial Clock Auction (CCA) format.
- 1.5 Most of the stakeholder comments submitted in response to that earlier Notice related specifically to the drafting of the CCA proposals, which do not apply to these revised draft regulations. However, where relevant, we have accepted some editorial improvements to the draft regulations suggested by stakeholders.
- 1.6 A full draft of the proposed revised Auction Regulations is set out in annex 5 of this document.

Next steps

- 1.7 In accordance with the requirements of section 122(4) and (5) of the Wireless Telegraphy Act 2006, this document gives notice of our intention to make the proposed regulations. We invite stakeholders to provide comments on the proposed regulations by 5pm on 9 December 2019.
- 1.8 Subject to this consultation, we intend to make the final Auction Regulations alongside our final policy Statement.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0028/172648/revised-proposal-auction-design.pdf

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- 1.9 The proposed regulations are set out in the annexes to this document, which are available on Ofcom's website (www.ofcom.org.uk). A paper copy may be obtained from John Glover, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

2. General effect of the proposed Wireless Telegraphy (Licence Award) Regulations 2020

The legislative framework

- 2.1 Under section 14(1), (2), (3), (4), (6) and (7) of the Wireless Telegraphy Act 2006 (the 'WT Act'), we may make regulations to allow wireless telegraphy licences to be awarded by means of an auction.²
- 2.2 This Notice is given in accordance with section 122(4) and (5) of the Act and covers a proposal to make a statutory instrument. It gives notice of our proposal to make regulations in relation to the award of frequencies in the 700 MHz and 3.6-3.8 GHz bands (the 'Auction Regulations').
- 2.3 A draft of the proposed Auction Regulations is set out at annex 5.

The proposed regulations

- 2.4 The proposed Auction Regulations set out the procedure and rules that would apply for the award of wireless telegraphy licences to operate within specified frequencies.
- 2.5 The proposed award process involves several stages. These are:
 - a) the **application stage**, in which applicants can apply to Ofcom to take part in the award process (Part 2 of the proposed Auction Regulations);
 - b) 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 overall bid constraint that applies to each bidder (Part 3 of the proposed Auction Regulations);
 - c) 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) (Part 5 of the proposed Auction Regulations); and
 - d) the **assignment stage**, in which winners of lots in the principal stage can bid for specific frequencies, and specific frequencies are assigned to winning bidders for each of those lots (Parts 6 to 8 of the proposed Auction Regulations). The assignment stage may include a **negotiation period**, during which winners of 3.6-3.8 GHz spectrum would have the opportunity to agree either (i) the assignment of the 3.6-3.8 GHz band, or (ii)

² When doing so, section 122(7) of the WT Act enables us to make different provision for different cases and to make incidental provision.

to be assigned blocks of 3.6-3.8 GHz spectrum which are adjacent to one or more other bidders; and

- e) the **grant stage**, in which 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 (Part 9 of the proposed Auction Regulations).

2.6 The proposed Auction Regulations also contain a section setting out the rules that will apply to applicants and bidders regarding the forfeiture of deposit and exclusion from the award process (Part 10 of the proposed Auction Regulations).

2.7 The proposed Auction Regulations have been drafted in a way that reflects the chronology of the award process in these different stages.

Extent of application of the regulations

2.8 The proposed Auction Regulations would apply in the United Kingdom (i.e. Great Britain and Northern Ireland) but would not extend to the Channel Islands or to the Isle of Man.

Entry into force of the regulations

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

The radio frequencies which are available for award

2.10 The frequencies which are available in the award process are set out in Schedule 1 to the proposed regulations. This Schedule is entitled 'Lots'.

2.11 Bids made during the award process will be for wireless telegraphy licences (granted under section 8 of the WT Act) which authorise the use of 700 MHz frequency lots or 3.6-3.8 GHz frequency lots.

2.12 As set out in Schedule 1, the following spectrum lots will be available:

- a) 60 MHz in six lots of 2x5 MHz in the 700 MHz spectrum ('700 MHz paired frequency lots');
- b) 20 MHz in four lots of 5 MHz in the 700 MHz downlink-only spectrum, which can be used for Supplemental Downlink ('700 MHz individual frequency lots'); and
- c) 120 MHz in 24 lots of 5 MHz in the 3.6-3.8 GHz spectrum ('3.6 GHz lots').

Application stage

2.13 The application stage is described in detail at Part 2 of the proposed Auction Regulations.

2.14 The application requirements include the submission of:

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- a) an application form which is set out in Schedule 2 to the Auction Regulations, and which includes warranties on the part of the applicant. It must be signed by two authorised persons;
 - b) a document, in the form set out in Schedule 3 to the Auction Regulations, 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;
 - c) a document setting out details of the existing spectrum holdings of the applicant and various related parties; and
 - d) an initial deposit of £100,000.
- 2.15 The document mentioned at paragraph 2.14b) is intended to cover advisers and other persons to whom the applicant may reveal confidential information in connection with the award process. Revealing confidential information would breach the regulations if it were to a person who was not included within the same bidder group and could lead to exclusion from the award process and forfeiture of deposits (Part 10 of the proposed Auction Regulations).
- 2.16 The concepts of ‘applicant group’ and ‘bidder group’ in the proposed Auction 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.
- 2.17 Members of an applicant’s group include its ‘associates’. An ‘associate’ of an applicant is defined as a person with a material interest in the applicant. Material interest is also defined with reference to particular sections in the Companies Act 2006 in Part 1 of the proposed Auction Regulations. 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 2.14b).
- 2.18 In exceptional circumstances, Ofcom may 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.

Qualification stage

- 2.19 The qualification stage is described in detail at Part 3 of the proposed Auction Regulations.
- 2.20 Following the date for receipt of applications, Ofcom will notify each applicant of the names and associates of every other applicant.
- 2.21 This notification will also set a deadline by which applicants must notify Ofcom whether any members of their applicant group are also associates of another applicant. In such cases, applicants must also notify the other applicant(s) concerned.

- 2.22 In parallel with this exercise, Ofcom will also consider whether any members of one applicant group are also members of another applicant group.
- 2.23 Where Ofcom has determined that a common membership exists, Ofcom will notify the applicants concerned and specify a deadline by which all the common memberships must be resolved (for example, the time by which a common associate must have disposed of or otherwise removed its 'material interest' in one or both of the applicants concerned, or by which one of the applicants concerned must have withdrawn from the award process).
- 2.24 Ofcom will then record the details of the members of each applicant group. 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. Each applicant group so recorded constitutes a 'bidder group' for the subsequent stages of the award process.
- 2.25 Ofcom will then consider whether each applicant is qualified to participate in the award process.
- 2.26 Each applicant which Ofcom determines is fit to hold a licence (in accordance with the provisions of regulation 10) and not having an overlap in its bidder group with another applicant, will qualify to participate in the award process.
- a) 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.
 - b) 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 and any direction given by the Secretary of State under section 5 of the Communications Act 2003.
- 2.27 Ofcom will notify each applicant of whether it has qualified to bid in the award process, including the reasons an applicant has not qualified, where relevant.

Withdrawal of qualified applicants

- 2.28 Following qualification there will be a period within which applicants may withdraw from the award process if they wish to do so. If an applicant does withdraw, it must inform Ofcom that it wishes to do so and it will be excluded from the award process. Ofcom will notify all applicants of the last day by which an applicant can withdraw from the award process without forfeit of its initial deposit, by publishing the withdrawal date on its website (regulation 13). Unless the applicant's initial deposit has been forfeited in accordance with the Auction Regulations (for example for submission of false information or disclosure of confidential information etc.), its initial deposit will be refunded.
- 2.29 Ofcom will return initial deposits to applicants who do not qualify to bid in the award process or who withdraw from the award process under regulation 13 at the end of the

qualification stage, unless the initial deposit has been forfeited in accordance with the Auction Regulations (for example for submission of false information or disclosure of confidential information etc.). No interest will be paid to applicants.

- 2.30 After the last day for withdrawal, Ofcom will determine and publish the number and names of bidders.
- 2.31 If a bidder wishes to receive a refund of its deposit after this, Ofcom would make this refund after the grant stage under regulation 119. This would require the applicant to participate in the award process, including meeting the additional deposit and eligibility requirements for the first principal stage round (see regulations 15 and 21), and to not be excluded from the award process under Regulation 122. The applicant must also make at least one principal stage bid in the first round (Regulation 21(7)). If a bidder has complied with these conditions and not won any spectrum in the principal stage, it will receive a refund of the total sum on deposit with Ofcom (initial and additional deposit, and any further deposit payments made during the principal stage) under regulation 119.
- 2.32 The level of deposits required to participate in the awards process are indicative of the level of commitment applicants enter into when applying to take part in the spectrum award process. Deposit requirements under the draft Regulations are intended to ensure that only serious prospective bidders, who are likely to ensure optimal use of the spectrum if they win spectrum, participate in the award. As refunds are only possible in very limited circumstances, all applicants should be aware of the period within which withdrawal from the award process is allowed without forfeit of the initial deposit.

Eligibility and deposit before the first round of the principal stage

- 2.33 Before the principal stage commences, bidders must pay an additional deposit (regulation 15) which will be taken into account by Ofcom in accordance with regulation 16 for calculating the bidder's eligibility limit for the first principal stage round.
- 2.34 The concept of an 'eligibility limit' is used in the proposed Auction Regulations to determine how many lots a bidder may bid for (as described in Part 3). This is a separate concept from the overall bid constraint which is discussed below. Each lot has a number of 'eligibility points' associated, as set out in Schedule 8. During the principal stage, the eligibility points used by a bidder must not exceed the bidder's eligibility limit. The concept of 'eligibility points' is explained further in paragraphs 2.51 to 2.57 of this document.
- 2.35 In order to determine eligibility limits for each bidder at the start of the principal stage, Ofcom calculates the maximum number of lots each bidder could bid for in the first principal stage round, by reference to the amount which the bidder has on deposit and the reserve prices of each of the lot types (regulation 16).
- 2.36 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 overall bid constraint

- 2.37 The proposed Auction Regulations provide for a limit on the total amount of spectrum that any bidder may win in the award, known as the ‘overall bid constraint’, which is determined in accordance with regulation 18. The purpose of this is to implement the proposal, set out in Section 5 of the December 2018 Consultation, to impose a cap of 416 MHz on the overall amount of spectrum for mobile services any bidder is authorised to use in order to ensure that the award does not give rise to any competition concerns.
- 2.38 In order to determine the overall bid constraint, Ofcom will record the existing spectrum holdings of each bidder after the deadline for additional deposits has passed (regulation 17 and Schedule 7). Ofcom will then determine, on the basis of the recorded spectrum holdings, the overall bid constraint that will apply for each bidder.
- 2.39 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 from the persons that are in a bidder’s group.
- 2.40 As with previous spectrum awards, a bidder’s overall bid constraint will remain the same throughout the principal stage. This means that, once a bidder’s existing spectrum holdings have been recorded, any divestment of spectrum by that bidder (or associated parties) will not lead to any amendment of that bidder’s recorded spectrum holdings, nor to its overall bid constraint. However, where a bidder’s existing spectrum holdings are increased after the recording of spectrum holdings and before the completion of the award, that bidder risks exclusion from the award process and forfeiture of its deposit by Ofcom (regulation 122).

The principal stage

- 2.41 The principal stage is described in detail in Part 5 of the proposed Auction Regulations. The principal stage consists of one or more principal stage rounds.
- 2.42 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 700 MHz paired frequency lots it wishes to make, the number of bids for 700 MHz individual frequency lots it wishes to make; and the number of bids for 3.6 GHz lots it wishes to make. The bidder must also indicate whether it wishes to request that its eligibility limit be carried forward to the next round.
- 2.43 A principal stage bid is a bid for a single:
- a) 700 MHz paired frequency lot; or
 - b) 700 MHz individual frequency lot; or
 - c) 3.6 GHz lot.

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- 2.44 In the first principal stage round, a bidder which does not bid for at least one lot is excluded from the auction (regulation 21).
- 2.45 For the first principal stage round, the round prices for each of the three types of lot are set at a reserve price specified in regulation 24.
- 2.46 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 regulations 25, 26, 27 and 28.
- 2.47 The principal stage rounds continue one after another until there is a round where:
- a) no bids are submitted by any bidders; and
 - b) 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

- 2.48 Following the end of each principal stage round, Ofcom will determine standing high bids for each lot.
- 2.49 Standing high bids are determined for each lot category independently. The process for determining standing high bids is specified in regulations 29 to 32.

Overall bid constraint rule

- 2.50 In any principal stage round, as set out in regulation 37, the total frequencies associated with a bidder's principal stage bid form must not exceed the bidder's overall bid constraint. This means that that the sum of (a) a bidder's new bids in the round and (b) that bidder's standing high bids assigned at the end of the previous round for any lot types it has not submitted new bids for, must be less than or equal to that bidder's overall bid constraint. The effect of the overall bid constraint is to preclude the possibility of a bidder winning an amount of spectrum that would allow them to breach the proposed overall cap of 416 MHz.

Eligibility limit for the subsequent principal stage rounds

- 2.51 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 41. The eligibility limit is equivalent to the eligibility points used by the bidder in the preceding round unless an eligibility event has occurred in respect of that round.

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- 2.52 Where the amount of eligibility points used by a bidder is less than its eligibility limit in a round, a bidder may maintain its eligibility limit for the next round by using an eligibility event.
- 2.53 An eligibility event will occur where:
- a) a bidder indicates on its principal stage form that it would like to carry forward its eligibility limit (regulation 43(1)(a)); or
 - b) 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 43(2)).
- 2.54 A bidder can only use an eligibility event up to three times during the principal stage (regulation 43(3)). A bidder cannot use an eligibility event in the first round or in any round where the bidder submits new bids.
- 2.55 The eligibility points used by a bidder in a given round are calculated by reference to either:
- a) the number of bids made by that bidder for a type of lot in that round; or
 - b) 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.
- 2.56 A bid for a 3.6 GHz lot or 700 MHz individual frequency lot (or a standing high bid for either type of lot) uses 1 eligibility point. A bid for a 700 MHz paired frequency lot (or a standing high bid for this type of lot) uses 4 eligibility points (Schedule 8).
- 2.57 Over successive principal stage rounds, a bidder's eligibility limit can stay the same or can fall, but can never increase.

Winning principal stage bids

- 2.58 Bids to which Ofcom has assigned standing high bid status after the final round of the principal stage will become winning bids, as set out in regulation 33.
- 2.59 Each winning bid made by a bidder in the principal stage will be assigned a base price, in accordance with regulation 34. The base price for a winning bid will be a sum equal to the round price at which the winning bidder made that bid.

Deposits during the principal stage

- 2.60 When a bidder has on deposit with Ofcom an amount which is less than its financial exposure in any round, Ofcom may require it to increase its deposit.

- 2.61 A bidder's financial exposure following a round corresponds to the sum of the following:
- a) the number of that bidder's principal stage bids for 3.6 GHz lots to which Ofcom assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
 - b) the number of that bidder's principal stage bids for 700 MHz individual frequency lots to which Ofcom assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made; and
 - c) the number of that bidder's principal stage bids for 700 MHz paired frequency lots to which Ofcom assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made.
- 2.62 Where Ofcom requires a bidder to increase its deposit during the principal stage, the further sum owed shall be no greater than the difference between the bidder's highest financial exposure from any previous round, and the amount the bidder has on deposit.
- 2.63 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 54.
- 2.64 Where a bidder fails to comply with a request from Ofcom that it increase its deposit, that bidder will not be entitled to submit any further principal stage forms (regulation 44). 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.
- 2.65 A final principal stage deposit is required once the winning principal stage bids have been determined (regulation 55). A bidder's required final principal stage deposit shall be an amount such that the total amount the bidder has on deposit is at least its financial exposure for the last principal stage round (see paragraph 2.60 above). It will therefore reflect the base price for its winning standing high bids.
- 2.66 In accordance with regulation 55(3), 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.

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

- 2.67 After the end of each day of the principal stage, Ofcom will publish on its website for each lot category the round prices and limited information on the level of excess demand reached in the last round of the day (regulation 47).
- 2.68 Following notification to each bidder of the results of the principal stage bids (regulation 48) Ofcom will publish a notification on its website detailing the names of the winning bidders, the number of lots won for each frequency category and the base price. Ofcom

will also publish the number of lots and the frequencies that have not been won (regulation 49).

Process

- 2.69 Bidders are required to use the electronic auction system to submit their principal stage form. Where a bidder cannot submit its bid form through the electronic auction system, for example due to technical failure, Ofcom will notify that bidder of an alternative method for that bidder to submit its form (regulation 51). The deadline for submission of the form is set by Ofcom before the start of each round and will be notified to bidders.
- 2.70 If Ofcom proceeds to make the proposed Regulations, it will publish detailed information on how to access and use the electronic auction system, and the process for alternative bid submission, before the award process begins.

The assignment stage

- 2.71 The assignment stage is described in detail in Parts 6 to 8 of the proposed Auction Regulations.
- 2.72 Where there is at least one winning bidder in a lot category, there will be a single round of bidding where winning bidders can bid on the specific locations of the frequencies they are to be assigned (regulation 57). Ofcom shall determine the assignment outcome for each of the 3.6-3.8 GHz, 700 MHz paired frequency, and 700 MHz individual frequency bands separately.
- 2.73 Winning bidders of 3.6 GHz lots will also have an opportunity to enter into negotiations after they have submitted their bids in the assignment stage bidding round. During this negotiation period, bidders may seek to agree their assignments with each other, as an alternative to bidding determining the assignment outcome. This would give effect to the proposals in our October 2019 consultation on the assignment stage of the auction. During this optional negotiation period, winning bidders of 3.6 GHz lots could unanimously agree their frequency assignments, or, alternatively, a subset of winning bidders of 3.6 GHz lots could agree to be assigned adjacent frequencies. If winning bidders of 3.6 GHz lots fail to reach either type of agreement in the negotiation period, Ofcom would determine the frequency assignments in accordance with the bids submitted in the assignment stage bidding round. The negotiation phase is described in Part 7 of the proposed Auction Regulations.
- 2.74 For the 700 MHz individual lots and 700 MHz paired frequency lots, only the assignment bidding process will be used to determine the frequencies to be assigned to winning bidders of 700 MHz spectrum.

Assignment by bidding

- 2.75 During the assignment stage bidding round, winning principal stage bidders in each lot category will bid for '3.6 GHz options', '700 MHz paired frequency options', and '700 MHz individual frequency options' respectively. These options will only allow for outcomes in which each bidder is assigned a contiguous frequency block that corresponds to the bandwidth acquired in the principal stage, and in which any lots not assigned to any bidder ('leftover lots'³) also form a contiguous frequency block (regulations 69, 72 and 75).
- 2.76 For the 3.6-3.8 GHz band, winning principal stage bidders of 20 MHz or less (fewer than five lots) will only be able to bid for 3.6 GHz assignment stage options which would result in their being assigned frequencies that are either (regulation 69(2)(c)):
- a) at the top or bottom of the band;
 - b) next to a series of one or more winning bidders of 20 MHz or less of 3.6-3.8 GHz spectrum, provided that one of these winning bidders is at the top or bottom of the band;
 - c) next to the block of leftover lots that is at the top or bottom of the band; or
 - d) next to a series of blocks of one or more winning bidders of 20 MHz or less *and* leftover lots, providing that one of the blocks in this series is at the top or bottom of the band.⁴
- 2.77 Parts 6 to 8 of the proposed Auction Regulations set out the procedure for assignment stage bidding.
- 2.78 Winning principal stage bidders may place a bid on each of their assignment stage options, but are not compelled to submit any assignment stage bids. In order to bid for an assignment stage option, a bidder must specify the amount it would be willing to pay for that option on its assignment stage form and submit its completed assignment stage form to Ofcom using the electronic auction system. The Auction Regulations also set out alternative methods for submitting assignment stage forms if necessary.

Required assignment stage deposit

- 2.79 Bids placed in the assignment stage by a bidder will only be considered valid if the bidder provides Ofcom with a deposit that covers (regulation 81):
- a) the required final principal stage deposit (see paragraph 2.65 above); plus
 - b) the bidder's highest assignment stage bid for a 700 MHz individual assignment stage option;

³ 'Leftover lots' are lots that were not awarded during the principal stage of the award, and will therefore not be assigned to any bidder.

⁴ For the avoidance of doubt, 'leftover lots' may be placed in any location in each band, provided that it is contiguous and all winning bidders receive contiguous assignments.

- c) the bidder's highest assignment stage bid for a 700 MHz paired assignment stage option; and
 - d) the bidder's highest assignment stage bid for a 3.6 GHz assignment stage option.
- 2.80 Where the bidder fails to pay its required assignment stage deposit, it shall be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options in its assignment options list, in accordance with regulations 70(5), 73(5) and 76(5).
- 2.81 Only bidders that have paid their required assignment stage deposit will be allowed to enter into adjacency agreements during the negotiation period (see below).

Assignment of 3.6 GHz lots following a negotiation

- 2.82 After the deadline for paying the required assignment stage deposit (in accordance with regulation 81) has passed, Ofcom will notify to winning bidders of 3.6 GHz lots that they will have an opportunity to participate in a negotiation period, and the deadline by which such bidders should confirm whether they wish to participate (regulation 84).
- 2.83 The intention behind the inclusion of the negotiation period in these draft Regulations is to enable the winning bidders of 3.6 GHz lots to have the opportunity to agree among themselves either:
- a) the assignment of all the 3.6 GHz lots (including the assignment of any unsold 3.6 GHz lots). This is referred to as a 'full adjacency agreement' in the Auction Regulations; or
 - b) to be assigned a contiguous block of 3.6-3.8 GHz spectrum which is adjacent to a contiguous block to be assigned to one or more specified other bidders. This is referred to as a 'partial adjacency agreement' in the Auction Regulations.
- 2.84 We consider that including this additional method for determining the assignment of the 3.6-3.8 GHz band could potentially lead to reduced fragmentation of the wider 3.4-3.8 GHz band. Further information on the rationale is set out in the June 2019 and October 2019 consultations.
- 2.85 By 'adjacency' we mean in this context that contiguous blocks of numbered frequency lots are immediately next to each other in frequency terms. In other words, the blocks are neighbouring each other in the list of numbered 3.6 GHz frequency lots set out in Schedule 1 to the draft Regulations.
- 2.86 Under the proposed Regulations, if at least two winning bidders confirm they wish to participate in the negotiation period, Ofcom will notify all winning bidders of the start and end time for the negotiation period. Ofcom currently envisages that the period for negotiation will last for 28 calendar days.
- 2.87 If less than two winning bidders for 3.6 GHz lots wish to participate in a negotiation period, there would not be a negotiation period, and Ofcom would assign the 3.6 GHz lots in accordance with the assignment stage bids that have been submitted.

- 2.88 However, provided that two or more winning bidders for 3.6 GHz lots confirm to Ofcom that they wish to participate in a negotiation period, any winning bidder of 3.6 GHz lots can participate in negotiations and enter into an adjacency agreement, even if it has not confirmed its intention to participate in the negotiation period under regulation 84.
- 2.89 Certain rules under the Regulations regarding exchange of confidential information between bidders would not apply during the negotiation period (regulation 122(2)).
- 2.90 During the negotiation period, winning bidders of 3.6 GHz lots can enter into either a ‘full adjacency agreement’, or ‘partial adjacency agreement’. These are described below.

Adjacency agreements

- 2.91 A ‘full adjacency agreement’ involves all winning 3.6 GHz bidders agreeing the precise frequencies to be assigned to each bidder in the 3.6-3.8 GHz band (regulation 82). Where not all 3.6 GHz lots are sold during the principal stage of the award, bidders who enter into a full adjacency agreement will also be able to specify which lots are not assigned to any bidder.
- 2.92 A ‘partial adjacency agreement’ would involve a subset of winning 3.6 GHz bidders agreeing to be assigned adjacent assignments (i.e. contiguous blocks of spectrum)⁵, but not the precise frequencies to be assigned (regulation 83).
- 2.93 In order for a full adjacency agreement to be valid, each winning bidder must submit a separate full adjacency agreement form (a template of which is set out in Schedule 10 of the Regulations). In order for a partial adjacency agreement to be valid, each bidder that wishes to be a party to that partial adjacency agreement must submit a separate partial adjacency agreement form (a template of which is set out in Schedule 9 of the Regulations) (regulations 86 and 87).
- 2.94 These forms require bidders to specify the details of the adjacency agreement to which they are party, and, in the case of a partial adjacency agreement, to confirm that they will make the additional zero bids required (see from paragraph 2.97 below). Ofcom will only consider an adjacency agreement valid if the adjacency agreement form submitted by each party to that adjacency agreement reflects the same agreement, and is submitted on time and in accordance with the prescribed method for submission. If the forms submitted by each party do not reflect the same agreement, then there will not be a valid agreement and those parties will not be able to enter into another adjacency agreement.
- 2.95 In requiring bidders to submit separate forms, we intend to secure additional assurance that each party to an adjacency agreement has consented to be part of that agreement and is aligned on its essential details. However, we welcome views from stakeholders on

⁵ This means that bidders who are party to a partial adjacency agreement will be assigned adjacent contiguous blocks of sequentially numbered 3.6 GHz lots as set out in Schedule 1 of the Auction Regulations.

this process, or whether an alternative process where all parties sign a single form would result in better assurance and protection against error.

- 2.96 There will be two phases of the negotiation period. Bidders may submit full adjacency agreement forms at any time throughout the duration of the negotiation period, but may only submit partial adjacency agreement forms in the second phase of the period (regulation 85-87). Bidders may only be party to one adjacency agreement, and may only submit one adjacency agreement form to Ofcom (Regulation 84(4)). This means there could only be one full adjacency agreement, but there could be more than one partial adjacency agreement.

Additional bids required by bidders who enter a partial adjacency agreement

- 2.97 Regulation 88 requires that, as a consequence of entering into a partial adjacency agreement, each bidder that enters a partial adjacency agreement must submit an assignment stage bid of zero pounds for every possible block of 3.6 GHz lots in which the number of 3.6 GHz lots is equal to the number of that winners winning principal stage bids for 3.6 GHz lots (regulation 88(2)). Regulation 89 then provides that the original assignment stage bids made by each party to a partial adjacency agreement under regulations 78 or 79 will be deemed invalid.
- 2.98 The requirements in regulations 88 and 89 are included so that winners of 20 MHz or less of 3.6-3.8 GHz spectrum that are also party to a partial adjacency agreement would no longer be restricted to assignments at the top or the bottom of the band.
- 2.99 Without the inclusion of the rules in regulations 88 and 89, winners of 20 MHz or less who are partial adjacency agreement parties would only have bids in place for 3.6 GHz lots which are at the top or bottom of the band (in accordance with the restrictions on their 3.6 GHz assignment stage options set out in regulation 69(2)(c)). This is a result of the 'small winner restriction' which is explained further in paragraph 2.76 of this document.
- 2.100 Regulations 88 and 89 therefore are intended to ensure that each bidder who is party to a partial adjacency agreement has a bid of zero pounds in place for each possible block of frequencies that it could be awarded. This means that when the winning assignments are determined in accordance with regulation 97, the winning combination could include bidders who are parties to a partial adjacency agreement being assigned spectrum anywhere in the band, provided that they are assigned spectrum which is adjacent to the bidders specified on their partial adjacency agreement forms (regulation 97(4)(f)).
- 2.101 Part 7 of the proposed Auction Regulations sets out the procedure for the negotiation period. We particularly welcome comments from stakeholders on the negotiation process as currently described in the draft Regulations.

Determination of winning assignments and additional prices

Determination where there is no adjacency agreement

- 2.102 Ofcom will determine the winning assignment stage bids for 700 MHz individual frequency lots, 700 MHz paired frequency lots and, where there is no valid adjacency agreements, 3.6 GHz lots in accordance with regulations 98, 102, and 104.
- 2.103 The winning assignment plan for each band will be the combination of bids for assignment stage options that is compatible with a valid assignment band plan and yields the greatest value. For the 3.6 GHz lots, valid assignment band plans are also subject to the criteria that winners of 20 MHz or less must be placed at the top or bottom of the band (with the exception that leftover lots may be placed anywhere in the band, including between winners of 20 MHz or less) (regulation 98(4)(e)).

Determination of the 3.6-3.8 GHz band plan where there is a valid full adjacency agreement

- 2.104 Where there is a valid full adjacency agreement, Ofcom will assign the 3.6-3.8 GHz frequencies in accordance with the band plan agreed by all winning 3.6 GHz bidders, and as specified in their full adjacency agreement forms (regulation 96).

Determination of the 3.6-3.8 GHz band plan where there is a valid partial adjacency agreement

- 2.105 Where there is one or more valid partial adjacency agreement between winning 3.6 GHz bidders, Ofcom will determine the winning assignments in a similar way as if there was no adjacency agreement i.e. it will determine the combination of bids that would form a valid assignment band plan and yields the greatest value. However:
- a) for parties to a valid partial adjacency agreement, Ofcom will only consider the additional required bids of zero pounds they submitted under regulation 88, and will not consider any bids made during the initial assignment stage bidding round under regulations 78 or 79 (regulation 89); and
 - b) there will be an extra requirement that valid 3.6 GHz assignment band plans will be restricted to those in which parties to a partial adjacency agreement are assigned adjacent frequencies in the order specified in the agreement (regulation 97(4)(f) and 97(4)(g)).
- 2.106 If there are multiple assignment plans that yield the greatest value, Ofcom will employ a method of random selection from amongst those valid combinations of assignment stage bids to select the winning assignment plan (regulation 98(5)).

Calculation of additional prices due for assignment stage winning bids

- 2.107 Winning bidders may have to pay 'additional prices', which will be based on the opportunity cost of their assignment stage bids, as set out regulations 100(b), 101, 103,

and 105. However, any bidder that is party to an adjacency agreement will not have to pay an additional price for its 3.6 GHz assignment (regulations 99 and 100(a)).

The grant stage

Licences available in the auction

- 2.108 Regulation 109 sets out the two licences which Ofcom proposes to make available under the auction. These are:
- a) 3.6 GHz licences, which will be available to bidders which made winning bids for 3.6 GHz lots; and
 - b) 700 MHz licences, which will be available to bidders which made winning bids for either 700 MHz individual frequency lots and/or 700 MHz paired frequency lots;
- 2.109 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.

Licence fees

- 2.110 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(s) (as defined in regulation 35) from the principal stage.
- 2.111 It may also reflect the bidder's 3.6 GHz, 700 MHz individual frequency or 700 MHz paired frequency additional prices from the assignment stage round. Regulations 110 and 111 set out precise details of how to determine a bidder's licence fee.

Determination and notification of total auction sum

- 2.112 The total auction sum is the amount payable by a bidder before Ofcom will grant any licences. Regulation 114 sets out how Ofcom would determine a bidder's total auction sum.
- 2.113 Ofcom will determine a bidder's total auction sum once the assignment stage has ended. The total auction sum payable by a winning bidder will comprise sum of the licence fees.
- 2.114 When Ofcom has determined the total auction sum payable by each winning bidder, it will notify each bidder of its total auction sum. It will also set a deadline by which bidders that have less than their total auction sum on deposit must increase their deposit to the level of the amount owed (regulations 115 and 116).
- 2.115 Regulation 117 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.

Granting of licences and payment of refunds

- 2.116 If a winning bidder has its total auction sum on deposit with Ofcom by the deadline specified under regulation 115, Ofcom will grant licences to that bidder for the relevant frequencies assigned and refund to the bidder the difference (if any) between the amount of that deposit (less any sum forfeited) and the total auction sum (regulations 115 and 119).
- 2.117 Interest, if any, will not be paid to applicants or bidders.
- 2.118 As explained above, if a bidder does not have its total auction sum on deposit by the deadline Ofcom has notified, 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

- 2.119 After the grant of licences, and the payment of refunds to 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. Where a bidder did not meet the requirements relating to the amount payable, Ofcom will also publish the details of the licences which would have been awarded, and fees which would have been paid.

Forfeit of deposit and exclusion

- 2.120 The proposed Regulations contain rules concerning the forfeit of deposits and exclusion of qualified applicants or bidders in Part 10. These rules have featured in previous Ofcom spectrum awards. A list of events is set out in regulation 124, and the occurrence of such events can lead to forfeiture of deposits and exclusion from the award process. Bids made by excluded bidders are deemed to be invalid.

Consultation questions

Question 1: Do you have any comments on our proposals to make Wireless Telegraphy (Licence Award) Regulations 2020, which are set out in draft form in Annex 5?

Question 2: In particular, do you have any comments on the procedure set out in Part 7 (and described above under 'Assignment of 3.6 GHz lots following a negotiation') regarding implementation of the proposed negotiation period for winning 3.6 GHz bidders?

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on **9 December 2019**.
- A1.2 You can download a response form from : <https://www.ofcom.org.uk/consultations-and-statements/category-2/auction-regulations-award-700-mhz-3.6-3.8-ghz-spectrum>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to radiospectrum.award@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Auction Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact John Glover on 020 7981 3000, or by email to radiospectrum.award@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement.
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

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)

A4. Consultation questions

Question 1: Do you have any comments on our proposals to make Wireless Telegraphy (Licence Award) Regulations 2020, which are set out in draft form in Annex 5?

Question 2: In particular, do you have any comments on the procedure set out in Part 7 (and described above under 'Assignment of 3.6 GHz lots following a negotiation') regarding implementation of the proposed negotiation period for winning 3.6 GHz bidders?

A5. Draft of the Wireless Telegraphy (Licence Award) Regulations 2020

A5.1 This annex is [published as a separate document](#).