



Notice of proposal to make
regulations in connection with the
award of licences in the frequency
bands 542 to 550 MHz and 758 to
766 MHz covering Cardiff and
Manchester

Consultation

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Section 1

Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make five statutory instruments in connection with the Digital Dividend Review first phase geographic interleaved awards of wireless telegraphy licences for use of spectrum within the bands 542 to 550 MHz and 758 to 766 MHz ('the Bands'). Copies of each of the five statutory instruments are set out in Annexes 5–8 of this document. Separately Ofcom has published the reasoning for its decision to award licences for use of spectrum in the Bands (see statement entitled 'Digital Dividend Review: geographic interleaved awards for frequency bands 542 to 550 MHz and 758 to 766 MHz' published on 29 October 2008). An information memorandum setting out relevant information which potential applicants for the licences should take into account has also been published¹.

Proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 and Wireless Telegraphy (Licence Award) (No.3) Regulations 2008

- 1.2 Each of these regulations sets out the process and rules for the award of a licence to operate within the Bands. Ofcom intends to hold an auction for each licence, although the regulations also provide for circumstances where there is insufficient demand and therefore no auction is held. The regulations include provisions describing the procedures and rules for applying and bidding for the licences, how the winning bidders will be identified and rules prescribing how applicants and bidders must conduct themselves during the award processes. Section 3 of this document sets out a detailed summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

- 1.3 Ofcom has decided that the licences awarded to operate within the Bands should be tradable. Accordingly Ofcom is proposing to make amendments to the existing regulations which govern spectrum trading to allow this to take place. Section 4 of this document sets out a summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

- 1.4 Where licences are tradable Ofcom's policy is to include relevant details of those licences on a public register to facilitate the efficient working of the spectrum market. Accordingly, Ofcom is proposing to make amendments to the existing regulations governing the register to allow details of the licences to operate within the Bands to be included. Section 5 of this document sets out a summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Regulations 2008

¹ Both documents are available at: <http://www.ofcom.org.uk/radiocomms/ddr/>

- 1.5 Ofcom is required to make a licence limitation order where it considers it appropriate to limit the number of licences for a particular set of frequencies as in the case of the licences to operate in the Bands. Section 6 of this document sets out a summary of the general effect of the provisions
- 1.6 Ofcom is giving notice and consulting on each of its proposals to make these five statutory instruments. Comments or representations with respect to the five proposed statutory instruments are invited by 25 November 2008.

Section 2

Notice

Background to the proposals

- 2.1 Ofcom plans to award wireless telegraphy licences for equipment operating within the following spectrum bands ('the Bands'): 542 to 550 MHz and 758 to 766 MHz.
- 2.2 On 29 October 2008, Ofcom published its decision to hold an award process in a statement entitled 'Digital Dividend Review: geographic interleaved awards for frequency bands 542 to 550 MHz and 758 to 766 MHz' (the 'Statement'). The Statement followed extensive consultation with stakeholders on the approach allowing use of the Bands, in particular:
- Consultation carried out by Ofcom in January 2005 ('Spectrum Framework Review: Implementation Plan'²).
 - Consultation carried out by Ofcom in December 2006 ('Digital Dividend Review: This document consults on the proposed approach to the award of the digital dividend spectrum (470-862 MHz)'³).
 - Consultation carried out by Ofcom in June 2008 ('Digital Dividend Review: geographic interleaved awards 470-550 MHz and 630-790 MHz' – the 'June consultation'⁴).

Notice of proposals

- 2.3 This notice covers five related proposals to make regulations to allow the award of licences to operate within the Bands.

Proposed auction regulations

- 2.4 Ofcom has the statutory power to make regulations to award licences by means of an auction and it has decided to do this. Accordingly Ofcom proposes to make the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 and the Wireless Telegraphy (Licence Award) (No.3) Regulations in order to allow auctions to be held for the purpose of awarding licences for equipment operating within the Bands. A draft of the proposed regulations is set out at Annex 5.
- 2.5 The general effect of these regulations is set out at Section 3 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

Proposed trading regulations

- 2.6 Ofcom has decided that the licences to be awarded for spectrum in the Bands should be tradable and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Spectrum

² <http://www.ofcom.org.uk/consult/condocs/sfrip/sfip/sfr-plan.pdf>

³ <http://www.ofcom.org.uk/consult/condocs/ddr/>

⁴ <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/>

Trading) (Amendment) (No.2) Regulations 2008. A draft of the proposed regulations is set out at Annex 6.

- 2.7 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Proposed register regulations

- 2.8 Ofcom has decided that certain information relating to the licences should be published and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008. A draft of the proposed regulations is set out at Annex 7.
- 2.9 The general effect of these regulations is set out at Section 5 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Proposed limitation order

- 2.10 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to spectrum in the Bands for the purpose of securing its efficient use. Accordingly under section 29 of the Wireless Telegraphy Act 2006 it must make an order. Ofcom proposes to make The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008. A draft of the proposed order is set out at Annex 8.
- 2.11 The general effect of this order is set out at Section 6 of this document. A Regulatory Impact Assessment (RIA) for the order is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Comments or representations

- 2.12 Comments or representations with respect to the five proposed regulations are invited by 25 November 2008. Comments should be sent to:

DDR Geographic Interleaved Project Team
Spectrum Policy Group
Third floor, Riverside House
2a Southwark Bridge Road
London SE1 9HA

E-mail: ddr.interleaved@ofcom.org.uk
Fax: 020 7783 4303

- 2.13 Following completion of this consultation process, Ofcom intends to make the final regulations as soon as practicable.
- 2.14 Hard copies of this notice and the proposed regulations can be obtained from:

Robert Emson

Notice of proposal to make regulations in connection with the award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester

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

E-mail: robert.emson@ofcom.org.uk

Tel: 020 7783 4375

- 2.15 Electronic copies are also available and this notice has been placed on Ofcom's website <http://www.ofcom.org.uk>.

Section 3

General effect of the proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 and Wireless Telegraphy (Licence Award) (No.3) Regulations 2008

The legislative framework

- 3.1 Under section 14(1), (2), (3), (4), (6) and (7) of the Wireless Telegraphy Act 2006 ('the 2006 Act') Ofcom may make regulations to allow wireless telegraphy licences to be awarded by means of an auction. A draft of the proposed regulations is set out at Annex 5 of this document.

Extent of application

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

The proposed regulations

- 3.3 The proposed regulations set out the procedures and rules that will apply for the award of licences to operate at the transmission sites at Wenvoe (for Cardiff) and at Winter Hill (for Manchester) within the relevant bands. The award process includes an application stage, a qualification stage, two alternative procedures for the award of the licence (where the procedure to be followed depends on the number of bidders) and a grant stage. The proposed regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process.

Application stage

- 3.4 The application stage is described in detail at Part 2 of the proposed regulations. Any body corporate wishing to participate in the award process must submit an application form containing the application information required by the proposed regulations.
- 3.5 The application information includes details of all members of the applicant's bidder group, which is defined in the proposed regulations as including the applicant, each associate of the applicant and any person in respect of whom the applicant or bidder has delivered to Ofcom a completed form as set out in Schedule 2 to the proposed regulations. Applicants are also required to provide Ofcom with details of any circumstances relevant to Ofcom's determination of the applicant's qualification to bid (including details of all exchanges of confidential information by the applicant to a party other than Ofcom or a member of its applicant group). The date, time and place for submission of applications will be published on the Ofcom website.
- 3.6 The application form also requires an applicant to certify, amongst other things that:

- it has the legal authority to participate in the auction and to be granted a licence;
 - the information provided in its application is true, accurate and complete; and
 - it is aware of the provisions relating to disclosure of confidential information.
- 3.7 In addition applicants must also submit documents in the form provided for in the proposed regulations for each person who is not an associate of the applicant but whom the applicant wishes to make a member of its bidder group (for example, advisers with whom the applicant wishes to exchange confidential information).
- 3.8 The term 'associate' is defined in the proposed regulations as meaning any person who has a material interest in an applicant or bidder, where the term 'material interest' is also defined in the regulations.
- 3.9 'Confidential information' is defined in the proposed regulations as including any information in respect of an applicant or bidder which is not in the public domain, but which if it were made public or disclosed to another applicant, potential applicant, bidder or member of another bidder group, would be likely to affect decisions that such other person may make in relation to the award process.
- 3.10 Finally, the application form must be accompanied by an initial deposit of ten thousand pounds. Such initial deposits will not earn interest and will only be refunded in the circumstances set out in the proposed regulations.

Qualification stage

- 3.11 The qualification stage is described in detail at Part 3 of the proposed regulations. Following receipt of the applications, Ofcom will notify all applicants of the names of each other applicant and the names of the associates of each other applicant and of a date by which applicants must inform Ofcom, and any other applicant concerned, if they have any common membership overlaps (i.e. where any member of the applicant's bidder group is also an associate of another applicant or is also an applicant).
- 3.12 Where Ofcom identifies any overlap between the bidder groups, it will also notify affected applicants. Where either Ofcom or any applicant has identified a common membership overlap, Ofcom will specify a date by which each applicant must notify Ofcom of any change in circumstances which means that there is no longer any such overlap. Ofcom will then record the details of each applicant's bidder group.
- 3.13 Regulation 6 of the proposed regulations provides that an applicant or bidder may make changes to the composition of its bidder group after recording members of a bidder group, provided such changes are notified to Ofcom and accompanied by revised versions of the documents required in the application stage.
- 3.14 Following the period for resolution of overlaps, Ofcom will determine which applicants are qualified to bid in the auction. An applicant may not qualify to bid where a member of its bidder group is also a member of another bidder group. In making its qualification determination, Ofcom will take into account a number of other factors, including whether the grant of a licence to the applicant would be prejudicial to the interests of national security, whether the applicant is a fit and proper person to hold a licence, whether the applicant or any member of its bidder group is in any way attempting to distort the award process or collude with another party, or whether the

applicant or any member of its bidder group has disclosed confidential information to someone outside its bidder group (subject to certain exceptions).

- 3.15 Applicants must provide Ofcom with any information which Ofcom requires in order to determine whether an applicant is qualified to bid in the auction. Failure to provide such information within the specified time will also be taken into account by Ofcom when determining which applicants qualify to bid in the auction.
- 3.16 Ofcom will notify each applicant of whether it has qualified to bid in the auction (giving reasons where an applicant has not qualified). Ofcom will publish the identity of all applicants who are qualified to bid in the auction on its website.
- 3.17 Ofcom will notify each applicant qualified to bid of the last day on which they may withdraw from the award process.
- 3.18 Applicants wishing to withdraw from the award process before this last day for withdrawal may do so by notice in writing to Ofcom, signed by at least two authorised persons (being persons identified on the application form as authorised to bind the applicant and in respect of whom specimen signatures were provided). Ofcom will notify all other applicants of any such withdrawal. Applicants who withdraw in this way will receive a refund of their initial deposit (unless the deposit has been forfeited in accordance with the activity rules set out at Part 6 of the proposed regulations) but not any interest which has accrued and they will not be re-admitted to the award process.
- 3.19 Applicants who do not withdraw before the last day for withdrawal are known as bidders and Ofcom will publish the names of all bidders on its website, along with a statement saying which of the two alternative procedures set out in the regulations is to be followed for the award of the licence. A bidder is committed to purchase the licence if (1) it is the only bidder remaining and Ofcom proceeds under Part 4 of the proposed regulations; or (2) the bidder submits a winning bid under the auction to be held under the Part 5 procedure.

Procedure where there is only one bidder

- 3.20 Part 4 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is only one bidder. Ofcom will send the bidder a notice stating the deadline by which the bidder must pay into Ofcom's bank account, with accompanying information which identifies the bidder, the licence fee. The licence fee payable will be ten thousand pounds, less the initial deposit, unless the initial deposit has already been forfeited, in which case the full licence fee will be payable.
- 3.21 If the bidder fails to pay the licence fee by the deadline specified, the bidder will not be entitled to the grant of the licence and will not receive a refund of its initial deposit, if this has not already been forfeited.
- 3.22 Ofcom will grant the bidder the licence once it has received full payment of the licence fee.
- 3.23 Following grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee and refunding initial deposits (without any interest having accrued) to applicants who were not qualified or withdrew before the last day for withdrawal, unless such initial deposits have already been forfeited in accordance with the proposed regulations.

Auction stage – more than one bidder

- 3.24 Part 5 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is more than one bidder. Part 5 is split into four chapters as follows:
- chapter 1 gives an overview of the auction stage;
 - chapter 2 sets out bid requirements;
 - chapter 3 sets out the procedure for rounds;
 - chapter 4 sets out the procedure for determination of the winning bid, grant stage and completion of the award process.
- 3.25 Regulation 15 provides that where there is more than one bidder the award process consists of an auction. It goes on to explain that a bid made during the auction will be a bid for the licence and that during the auction stage there will be one or more rounds for making bids.
- 3.26 In order to make a bid the bidder must use a form provided by Ofcom ('bid form'). The bidder must decide the amount that they wish to bid, subject to restrictions set out in the proposed regulations, and must not submit more than one bid in any round.
- 3.27 Regulation 17 of the proposed regulations sets out that any bidder which does not submit a valid bid in the first round will not receive a refund of its initial deposit, or any subsequent deposits.
- 3.28 Regulation 18 of the proposed regulations explains how the number of bid rounds is determined. After each round, Ofcom will determine the total number of valid bids submitted at the round price for that round. Where that total is more than one there will be another round. Where there is another round the bidder may make a bid only if they have made a valid bid at the round price in the previous round.
- 3.29 Regulation 20 of the proposed regulations sets out that the round price in the first round will be fifteen thousand pounds. In subsequent rounds the round price will be higher than that for the previous round, but will not be more than twice the amount of the round price in the previous round.
- 3.30 A bid made in the first round must be an amount that is between ten thousand pounds and fifteen thousand pounds. A bid made during a subsequent round must be more than the round price for the proceeding round but not more than the round price for the current round.
- 3.31 To be a 'valid bid' and therefore taken into account when determining the bid total, the winning bid and the licence fee payable by the winning bidder, a bid must satisfy conditions which are set out in regulation 22 of the proposed regulations. These conditions are that:
- It must be made on a correctly completed bid form provided by Ofcom.
 - The bid is the only bid submitted by the bidder in that round.

- The bidder must have made a valid bid in the previous round at an amount equal to the round price.
 - A bid made in the first round must be between ten thousand pounds and fifteen thousand pounds.
 - A bid made during a subsequent round must be an amount that is more than the round price for the proceeding round but not more than the round price for the current round.
 - The bid must be submitted using the electronic auction system (or an alternative method as provided for in regulation 25).
 - The bid must be submitted by the end of the round time.
- 3.32 Prior to the start of each round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make bids and the round price for that round. If Ofcom does not receive a completed bid form from a bidder within the required time period for an auction round, it will allow an extension period, provided that the completed bid form is received by Ofcom no later than thirty minutes after the expiry of the round. The general rule is that a bidder will be allowed no more than two extension periods in respect of all the rounds. However, if during a previous round, a bidder submitted a bid form during the thirty minute time extension period but did so because of circumstances beyond the bidder's control and Ofcom is satisfied that this is the case, the bidder will be granted a further extension right.
- 3.33 Regulation 24 of the proposed regulations explains that bidders must submit the completed bid form using the electronic system by the time specified for the end of the round.
- 3.34 If the bidder is unable to submit a bid using the electronic auction system in certain circumstances there is provision to submit a completed bid form by means of an alternative method, subject to certain conditions that are set out in regulation 25.
- 3.35 Where any bid form is incomplete or defective but Ofcom believes that it can ascertain the intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the bid form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct, the bid form will not be taken into consideration for the purposes of determining the bid total, the winning bid and the licence fee payable by the winning bidder.
- 3.36 If a bidder submits a bid which is not valid, Ofcom will, after the end of the bid round, notify the bidder and explain why it is not valid.
- 3.37 After the end of a round and before the start of a subsequent round Ofcom will notify bidders of the number of bidders in that round that made:
- A valid bid at the round price for that round; and
 - A valid bid at an amount less than the round price for that round.
- 3.38 Regulation 29 of the proposed regulations provides that in addition to the initial deposit a bidder may pay an additional sum, in pounds, to Ofcom. Any such

additional sum must be paid into Ofcom's bank account, by a same day electronic transfer, with accompanying information which identifies the bidder by the deadline specified by Ofcom.

- 3.39 Regulation 30 of the proposed regulations provides for Ofcom to notify to a bidder that they are required to pay a further sum in pounds by the notified deadline as a deposit during the bid rounds. The further sum required from the bidder will be an amount such that the bidder's total amount on deposit (subject to any amount forfeited) is not less than the amount of the highest valid bid that the bidder made before Ofcom issued the notification. If a bidder fails to comply with the Ofcom notification Ofcom will notify the bidder that it will be unable to make bids in any subsequent rounds. However, the bids it made before being notified of this will remain valid.
- 3.40 Following the final round, Ofcom will determine the winning bid and the identity of the winning bidder. The winning bid will be the highest bid made in the auction stage. The licence fee for the winning bidder will be the amount of the highest valid bid in the auction stage that was not the winning bid unless the circumstances described, in paragraphs 3.41 and 3.42 below, apply.
- 3.41 Regulation 31 provides that where there are no valid bids in the first round there will be no winning bidder and the auction shall not proceed to a subsequent round.
- 3.42 In determining the winning bid and the identity of the winning bidder, where there is more than one valid bid of equal highest value in a round Ofcom will employ a method of random selection amongst the bids. The licence fee where this applies will be the amount of the highest bid.
- 3.43 Where there is only one valid bid in the first round the licence fee will be £10,000.
- 3.44 Following the determination of the winning bid and the determination of the licence fee Ofcom will notify the winning bidder of the winning bid and the licence fee.
- 3.45 Regulation 33 of the proposed regulations sets out the procedure where the amount of the winning bidder's deposit is less than the licence fee. Ofcom will notify the bidder of the deadline by which it must remit to Ofcom a sum equal to the difference between the licence fee and the amount of the bidder's deposit. Where the bidder pays the correct sum, Ofcom will grant the winning bidder the licence.
- 3.46 Regulation 34 of the proposed regulations sets out the procedure where the amount of the winning bidder's deposit is greater than, or equal to, the licence fee. Ofcom will grant the bidder the licence and refund the difference (if any) between the amount of the winning bidder's deposit and the licence fee.
- 3.47 Regulation 35 of the proposed regulations sets out the procedure where a winning bidder does not satisfy the requirements of regulation 33. In these circumstances, the winning bidder will not be entitled to the grant of the licence and will not receive a refund of any deposits which it has made. Ofcom will select a winner from amongst a list of appropriate bidders. The order of preference for selection will be determined by the sums bid by those bidders, with higher sums prevailing over lower sums. Where any two or more bidders bid sums of equal value, then Ofcom will employ a method of random selection to determine the precedence amongst those bidders. The licence fee payable for the winning bidder will be calculated under regulation 31(5) and the winner will be notified of the results of the auction stage under regulation 32. Ofcom will then follow the procedures where either the amount of the winner bidder's

deposit is less than the licence fee, or greater than or equal to the licence fee. If the winning bidder under this procedure then fails to follow the requirement (if applicable) set out in regulation 33(1)(b) then Ofcom will follow the procedure in respect of the next bidder, in the order of precedence until the licence is awarded, or the list of appropriate bidders is exhausted.

- 3.48 Following the grant of the licence Ofcom will complete the award process by publishing details of all valid bids made by each bidder, the name of the person to whom the licence was granted and the amount of the licence fee paid. Ofcom will also refund to applicants who were not qualified (or withdrew) and to unsuccessful bidders the initial deposits and any further sums paid by way of deposit (unless forfeit under the regulations). No interest which has accrued on the deposits will be paid.

Activity rules

- 3.49 Part 6 of the proposed regulations sets out the activity rules that apply to applicants that have qualified to bid and to bidders. Regulation 37 provides that where Ofcom are satisfied that any of the events set out in regulation 38 are occurring, or have occurred, and that occurrence would materially affect the outcome of the award process, the bidder or applicant concerned will forfeit all of the sums that it has paid on deposit to Ofcom. In such circumstances regulation 37(b) of the proposed regulations sets out that the bidder may also be excluded from the award process by Ofcom giving that applicant or bidder written notice.
- 3.50 Regulation 38 of the proposed regulations sets out the events that may result in a bidder forfeiting their deposits or being excluded from the award process. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group colluding or attempting to collude with another person to distort the award process in any way, disclosure of confidential information to someone who is not a member of the bidder group (subject to certain exceptions) or changes occurring in the membership of the bidder group, except as provided for in regulation 38(i) of the proposed regulations.

Miscellaneous

- 3.51 Part 7 of the proposed regulations sets out other miscellaneous provisions, including a general power of exclusion where Ofcom determines in its opinion that the grant of a licence to a bidder would be prejudicial to the interests of national security or where the bidder is not a fit and proper person to hold a licence.
- 3.52 Regulation 40 of the proposed regulations provides details of Ofcom's contact details for the purposes of receiving any notification from a bidder, or applicant, in accordance with the award process. It also states that notifications to Ofcom in accordance with the proposed regulations may be made by email, personal delivery or fax.
- 3.53 Regulation 41 of the proposed regulations enables Ofcom to alter the deadline or location specified in relation to the delivery of any documents or for completion of any action in relation to the award process, where it would be impractical for such delivery or action to take place at the locations or by or within the deadlines originally specified.
- 3.54 Regulation 42 of the proposed regulations provides that where it would be impractical to start or end a round at the times notified to bidders, or use the electronic auction

system, Ofcom will take all reasonable steps to notify bidders of revised timings and an alternative method of participating in the auction.

- 3.55 Regulation 43 of the proposed regulations provides that where an auction round is in progress and Ofcom determine that it is not possible to continue the round due to technical failure (or an event with similar effect) Ofcom will take all reasonable steps to notify bidders of its determination, disregard bids made in that round and resume the award procedure from the end of the previous round (or if there was no previous round, the start of the first round).
- 3.56 If it is not possible to continue the award process as set out in Part 5 of the regulations due to technical failure (or an event with similar effect) Ofcom will determine whether it is necessary, in order to secure a fair and efficient outcome to the award process, to disregard bids made in one or more rounds of the auction and resume the award procedure from the end of the latest round for which bids are not disregarded, or to resume from the start of the first primary bid round. Ofcom will take all reasonable steps to notify bidders of its above determination.
- 3.57 Regulation 44 of the proposed regulations provides Ofcom with a general discretion to refund, as it sees fit, any sums paid to it in accordance with any provision of the proposed regulations.

Section 4

General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

The legislative framework

- 4.1 These regulations are to be made under sections 30(1) and (3) and 122(7) of the Wireless Telegraphy Act 2006. Section 30 implements Article 9(3) and (4) of the Directive of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (2002/21/EC). Under section 30(1) of the Act Ofcom may by regulations authorise the transfer to another person by the holder of a wireless telegraphy licence, or the holder of a grant of recognised spectrum access, of rights and obligations arising by virtue of such a licence or grant.
- 4.2 Under section 30(4) and (5) transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.
- 4.3 A draft of the regulations which Ofcom proposes to make is set out at Annex 6.
- 4.4 These Regulations amend the existing regulations on spectrum trading: the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (SI 2004/3154 as amended by SI 2006/339, 2006/1807, 2007/380, 2007/3387, 2008/688 and 2008/2105) (the '2004 Regulations').

The existing 2004 Regulations on spectrum trading

- 4.5 The 2004 Regulations and the various amending regulations are available at www.opsi.gov.uk.
- 4.6 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at www.ofcom.org.uk.

Total and partial transfers under the 2004 Regulations

- 4.7 Regulation 4(1) of the 2004 Regulations authorises the transfer of all rights and obligations arising by virtue of the wireless telegraphy licences of the classes and associated frequencies listed in the Schedule.
- 4.8 Regulation 6 of the 2004 Regulations authorises the transfer of rights and obligations relating to parts of the licensed range of frequencies and/or part of the licensed geographical area for licences of certain classes listed in the Schedule.
- 4.9 Under the 2004 Regulations two types of transfer are authorised by regulation 4(1) and regulation 6 (regardless of whether the transfer is 'total' or 'partial').

- 4.10 Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer ('outright transfer').
- 4.11 Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer ('concurrent transfer').
- 4.12 Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that traded the spectrum) no longer has any rights to use the traded spectrum.
- 4.13 Concurrent transfers, on the other hand, enable licensees to share rights to use spectrum as they see fit over a period of time without the need to undertake further transfers between themselves to effect that sharing.
- 4.14 Section 30(2)(a) and (c) of the Act determine the sorts of transfers that Ofcom may authorise in the regulations. To be sure to permit the maximum possible types of transfer Ofcom decided to mirror in the 2004 Regulations the wording used in that section.

Circumstances where transfers are not authorised under the 2004 Regulations

- 4.15 Regulations 4(1) and 6 of the 2004 Regulations which authorise transfers are both subject to regulation 7. Regulation 7 sets out particular circumstances in which transfers are not authorised.
- 4.16 These are:
- Where the holder (or all of the concurrent holders) and the transferee have not consented to the transfer;
 - Where the licence fees are outstanding or where the licence holder has opted to pay Ofcom its licence fee by instalments. In the latter situation, the licensee could make payment for outstanding instalments and then approach Ofcom with a proposed transfer;
 - Where Ofcom has served notice of a proposal to revoke or vary the licence but that revocation or variation has not yet been made, or where the licence holder has requested Ofcom to revoke or vary the licence but that revocation or variation has not yet been made;
 - Where Ofcom has not consented to it being made.

Notification of a trade under the 2004 Regulations

- 4.17 Once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 8(1) of the 2004 Regulations). Once all the information is provided, Ofcom will check the documentation in order to ensure that the mandatory information requirements have been met and that the proposed transfer is consistent with the information held by Ofcom. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 8(2) of the 2004 Regulations).

Giving consent to a trade under the 2004 Regulations

- 4.18 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 9 of the 2004 Regulations) take into account the following factors:
- Whether the holder (or concurrent holders) of the licence is/are in breach of the terms of the licence.
 - Whether the transferee (and the transferor in the case of a partial transfer) is able to meet the terms of the licence.
 - Whether the transferee is able to meet any criteria in relation to the persons to whom a wireless telegraphy licence may be granted.
 - Whether it is requisite or expedient for Ofcom to refuse consent because Ofcom has to meet national security concerns, comply with European Community or international obligations or a direction by the Secretary of State
- 4.19 In some circumstances Ofcom may be able to consent to a transfer but give a direction to the parties to the trade that the transfer will only be put into effect when certain of the above matters are resolved. This is permitted by regulation 10 of the 2004 Regulations.

Enacting the transfer under the 2004 Regulations

- 4.20 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.
- 4.21 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee (Regulation 8(5) of the 2004 Regulations).
- 4.22 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed and the public register, as described in the Trading Regulations, to ensure that the new licence holdings are reflected.

The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008 (the 'proposed amending regulations')

- 4.23 The proposed amending regulations would amend the 2004 Regulations to permit all types of transfers (described in the 2004 Regulations) of wireless telegraphy licences of the class Spectrum Access for the frequencies in the 542 to 550 MHz, for a limited period, 742 to 750 MHz, and 758 to 766 MHz bands.
- 4.24 Outright, partial and concurrent transfers which are permitted by the 2004 Regulations for other licences would also be permitted for this licence class (Spectrum Access) and these frequencies. These include:
- outright total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) are transferred in entirety from one party to another;

- concurrent total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
- outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
- concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s).

4.25 The circumstances where transfers are not authorised and the existing rules in the 2004 Regulations on the process for notification, consent and enactment of transfers described above, shall apply to transfers of these licences.

Section 5

General effect of the proposed Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

The legislative framework and the existing regulations

- 5.1 Under section 31(1) of the Wireless Telegraphy Act 2006 Ofcom may, by regulations, make provision for the establishment and maintenance of a wireless telegraphy register. Under section 31(2) of the 2006 Act Ofcom may only include relevant information in the register if it is information of a description prescribed by regulations.
- 5.2 The proposed regulations amend the Wireless Telegraphy (Register) Regulations 2004 (SI 2004/3155 as amended by SI 2006/340, 2006/1808, 2007/381, 2007/3389 and 2008/689) (the '2004 Regulations') which provided that Ofcom shall establish and maintain a register of relevant information and prescribed the relevant information.
- 5.3 The 2004 Regulations and the various amending regulations are available at www.opsi.gov.uk.
- 5.4 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at www.ofcom.org.uk.

The amendments to the 2004 regulations which are proposed in the draft Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

- 5.5 A draft of the regulations which Ofcom proposes to make is set out at Annex 7. The proposed regulations add a category of licences (those to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 and Wireless Telegraphy (Licence Award) (No.3) Regulations 2008) for which information will be published on the register.
- 5.6 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns.

Section 6

General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2008

The legislative framework

- 6.1 Under section 29(1) of the Wireless Telegraphy Act 2006 Ofcom may, if it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implements Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)
- 6.2 Under section 29(2) an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 6.3 Where Ofcom make an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to who licences will be granted.

The proposed regulations

- 6.4 A draft of the proposed order is set out at Annex 8.
- 6.5 In relation to the award of licences in the licence class Spectrum Access for the frequencies in the 542 to 550 MHz (for a limited period, 742 to 750 MHz) and 758 to 766 MHz bands, Ofcom will grant a limited number of licences. The persons to whom the licences will be granted will be determined by the award processes held under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 and the Wireless Telegraphy (Licence Award) (No.3) Regulations (see sections 2 and 3 of this Notice for more information on the proposed award process).
- 6.6 Article 2(4) of the proposed order sets out the criteria for determining the number of licences to be granted. This is that the number to be granted should be the number which is most likely to secure the optimal use of the electromagnetic spectrum and promote competition in the provision of electronic communication services having regard to the matters set out in section 3(1) and (2) of the Wireless Telegraphy Act 2006.

Section 7

Regulatory Impact Assessments

Introduction

- 7.1 In accordance with government practice, where a statutory regulation is proposed, a Regulatory Impact Assessment (RIA) must be undertaken. The analysis presented in this Annex represents a Regulatory Impact assessment, as defined in section 7 of the Communications Act 2003 (the '2003 Act').
- 7.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- 7.3 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the 2003 Act, which means that generally we will carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. In accordance with section 7 of the 2003 Act, in producing this RIA, we have had regard to such general guidance as it considers appropriate including related to Cabinet Office guidance. For further information about our approach to impact assessments, see the guidelines, 'Better policy-making: Ofcom's approach to impact assessment', which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

Regulatory Impact Assessment – the draft Wireless Telegraphy (Licence Award) Regulations 2008

Proposal, purpose and intended effect

- 7.4 We published an Impact Assessment (IA) in our June consultation document⁵. This explained how our approach to the awards was guided by our primary duty to further the interests of citizens and consumers, and noted our overarching policy objective of this award, which is to maximise the total value to society generated by the use of this spectrum over time. It set out and evaluated the options that we had considered for this award.
- 7.5 This section provides an update to that IA. It differs from the June consultation document IA in that it focuses exclusively on the auction design for the first phase awards and takes into account a small number of changes to packaging and auction design for these awards, which are set out in the accompanying Statement. In addition it comments on the responses to the June consultation which are relevant both to these changes and the original RIA.

Introduction

⁵ The consultation document can be found at
<http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/>

- 7.6 The consultation considered a number of factors relevant to the award of the spectrum, including Ofcom's powers and approach to spectrum management, the availability and potential uses of the spectrum, the potential demand for the spectrum and the likely spectrum packaging requirements and auction design.
- 7.7 The June consultation document IA considered the advantages and disadvantages of a number of options for packaging and awarding the spectrum. The October 2008 Statement sets out our revised view for packaging and award design for the first phase awards in the light of responses to the June consultation and the implications for the appropriate auction design. This RIA focuses on our revised view as set out in the Statement as well as addressing any comments made on the Consultation IA and responses to the June Consultation document.
- 7.8 The key proposals set out in the June consultation for the proposed first phase awards were as follows:
- Geographic interleaved spectrum to be defined by channel and geographic coverage;
 - The award to be for an 8 MHz lot at each of the Caldbeck, Winter Hill and Wenvoe transmitters, to be made through three separate auctions;
 - Each auction will take the form of a simple single unit ascending bid auction;
 - The winning bidder in each auction to be the one who submitted the highest bid;
 - The minimum price of £10,000 to be set for each licence;
 - Transparency; and
 - Each licence to carry a licence condition requiring licensees to provide certain information regarding their use of spectrum.

Consultation responses on spectrum packaging and auction design

- 7.9 Ofcom received several responses to the consultation that commented on the packaging of spectrum, sequencing and timing, and auction design⁶. Confining attention to the first phase awards, in summary these comments were:
- One respondent said that spectrum should be packaged so as to allow coverage across the south of Scotland, and hence argued for spectrum at Selkirk to be awarded at the same time as spectrum for Caldbeck;
 - Due to the lack of interest from any local operator, and noting that the RTS licence for Carlisle has expired, we will not to include a lot for Caldbeck to cover Carlisle in the first phase awards.
 - A number of respondents argued that the levels of the reserve price (i.e. the minimum bid price in the first auction round) and deposit were set too high; suggesting for example that the levels outlined in the consultation document might deter certain types of bidders such as community or not for profit organisations, or that levels should be set with reference to the likely number of viewers that a spectrum lot might allow for;

⁶ The responses may be found at <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/responses/>

- A number of respondents requested that the first phase awards are held as early as possible, with one respondent for example requesting that the relevant lots are awarded at least 9 months before DSO;
- Some respondents suggested that the award timetable needed to be delayed slightly in order to address a number of issues. Issues raised included Scottish broadcasting and the provision of local TV services there, and technical issues surrounding cognitive radio and the deployment of broadband communications for emergency services;
- One respondent said it favoured either a sequence of awards or parallel awards of all three. Other respondents who mentioned the issue noted that they preferred parallel awards.
- One respondent said that bidders should be anonymous during the award process.

7.10 In the light of these responses, where relevant we either clarified or put forward slightly amended proposals for spectrum packaging and auction design for the first phase awards.

Packaging

- 7.11 In the light of responses we have decided to offer two rather than three lots for auction in the first phase awards. These will be for Wenvoe (for Cardiff) and Winter Hill (for Manchester) transmission sites. Our other packaging options remain unchanged.
- 7.12 Our original impact assessment noted that we had already stated that we planned to award lots in respect of locations where there were existing Restricted Television Service Licences ('RTSLs') (Carlisle, Manchester and Cardiff). Hence the assessment there was primarily concerned with the extent to which further lots might be auctioned, beyond the first phase award.
- 7.13 The table below concerns the award of lots at Caldbeck, Winter Hill and Wenvoe. We reprise the advantages and disadvantages of our original proposals (as outlined in the June consultation) and our revised proposal in the October 2008 Statement, which forms the basis of the award that is covered by the proposed Regulations: We have revised the original proposal due to the lack of interest from any local operator, and noting that the RTSL for Carlisle has expired and have decided not to include a lot for Caldbeck to cover Carlisle in these awards.

Table

Option	Advantages	Disadvantages
Original option: lots at the location of three existing RTSLs, Wenvoe, Winter Hill, Caldbeck	Meets our commitments as set out in our December 2007 Statement to meet needs of RTSLs facing first DSO	Would in present circumstances increase risk of unsold lots
Revised plan: lots at the location of two RTSLs, Wenvoe and Winter Hill	Continues to meet stated needs of RTSL holders	

	Reduces risk of unsold lots	
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- 7.14 We have therefore concluded that it is appropriate to make available lots at Wenvoe (for Cardiff) and Winter Hill (for Manchester) available for the first phase award.

Sequencing and timing

- 7.15 We suggested in our June consultation document that in the first phase awards we would award lots in respect of Carlisle, Cardiff and Manchester in late 2008 or early 2009. We also noted that we would need to consider whether to run the three auctions sequentially or in parallel, and set out some considerations for each approach, noting that both approaches should produce a similarly efficient auction outcome and spectrum allocation. We did not suggest a preference for one over the other and so the original impact assessment did not cover this aspect.

- 7.16 Following responses and our decision not to include a lot for Carlisle (from Caldbeck) in the first phase awards, we have decided to hold parallel awards for Wenvoe (for Cardiff) and Winter Hill (for Manchester) in early 2009. The following table sets out our assessment of this approach.

Option	Advantages	Disadvantages
Timing		
Original option stands: Hold first phase awards in early 2009	Meets requirements of RTSL holders and Ofcom commitments in this regard Releases some spectrum onto market as soon as possible	For bidders interested in local lots, may be too early to secure public funding
Sequential versus parallel		
Sequential	May be more practicable for bidders where they wish to participate in more than one award	Extends period taken to complete awards and so may increase uncertainty
Parallel	Expedites completion of awards and so reduces uncertainty	As number of awards increase, becomes increasingly impracticable for bidders wishing to participate in more than one award

- 7.17 We conclude that it will be appropriate to hold parallel awards in early 2009.

Auction design for first phase awards

- 7.18 In the June consultation we concluded that it would be appropriate to award each of the first phase lots using a single unit ascending bid auction, rather than a sealed bid auction.
- 7.19 Most respondents who commented on this issue in response to our June consultation document expressed broad contentment with this approach. A number of respondents however put forward arguments concerning some detailed auction design elements, in particular concerning the level of the deposit and reserve price (i.e. the minimum bid price in the first auction round). We are therefore proposing to amend these elements of the award design, as set out in our Statement.
- 7.20 The table below reviews the advantages and disadvantages of the auction design:

Option	Advantages	Disadvantages
Original option stands: Single unit ascending bid auction	Allows bidders to see development of prices and hence facilitates efficient price discovery	Slightly more complex than sealed bid auction

Auction rules for first phase awards

- 7.21 We proposed to award these lots using a single unit ascending bid auction, in late 2008 or early 2009 and proposed specific rules for the auction, including a minimum price of £25,000 with a 50 per cent deposit on application and full transparency in the auction process.
- 7.22 A number of respondents argued that the levels of the the minimum bid price in the first auction round and deposit were set too high; suggesting that the levels outlined in the consultation document might deter certain types of bidders such as community or not for profit organisations, or that levels should be set with reference to the likely number of viewers that a spectrum lot might allow for. Also, one respondent said that bidders should be anonymous during the award process.
- 7.23 We have decided that the the minimum bid price in the first auction round will be £10,000 for each licence and bidders will be required to submit a deposit for the same amount on application to take part in the auction. We consider that these amounts strike a reasonable balance between encouraging applications and bids from those with viable business cases and discouraging frivolous applications and bidding.
- 7.24 At the end of each bidding round we will provide bidders with information on the number of bidders that have submitted bids in the round, but not the names of bidders. We will give the number that submitted valid bids at the round price and the number that submitted valid bids at less than the round price. For the first phase awards we consider that there would be no significant loss in efficiency if after each round we released to bidders only the number of bidders that made bids, but not the names of the bidders. At the same time this would reduce any risk there might be of collusive or aggressive behaviour.
- 7.25 The following table summarises our assessment.

Option	Advantages	Disadvantages
Minimum bid price in the first round of £25,000	Would discourage bidders who did not have the resources to make effective use of the spectrum.	Might over estimate the value of the spectrum and discourage smaller organisations from bidding.
Minimum bid price in the first round of £10,000	Would encourage bidding by smaller organisations with viable business cases.	Might under estimate the value of the spectrum and encourage applications from those with no intention of submitting serious bids.
Initial deposit of 50% of the the minimum bid price in the first auction round	Depending on level of the the minimum bid price in the first auction round, may encourage applications from applicants with viable business cases.	Where the minimum bid price in the first auction round is relatively low, at £10,000, might encourage applications from those with no intention of submitting serious bids.
Initial deposit of £10,000	Would encourage applications from smaller organisations with viable business cases.	Might encourage applications from those with no intention of submitting serious bids.
Release full information on those bidding in each round	Allows bidders to assess bidding behaviour of competitors. Can help secure an efficient auction outcome.	Can assist collusion between bidders or give large bidders the opportunity to indulge in strategic behaviour designed to undermine smaller bidders.
Release information only on the number bidding in each round	Allows bidders to assess bidding behaviour of competitors. Helps avoid risk of collusion and strategic behaviour by large bidders.	May be less efficient than full disclosure.

Promoting competition and efficiency

- 7.26 In the June consultation document we considered how the award of this spectrum could best promote competition and efficiency in downstream markets. We noted that our June consultation document concerning the award of the DDR cleared spectrum had made a similar assessment of competition and efficiency issues.
- 7.27 The June consultation document explained the importance of competition and efficiency given the value of spectrum and the value and range of services it may underpin. We set out how we aimed to promote competition and efficiency through a three step process:

- i. Use of auction design and packaging to promote competition – for example, promoting transparency about bids during the auction which can minimise the ability of participants to manipulate award prices or outcomes;
 - ii. Consideration of the need for general safeguards to provide spectrum holders with sharper incentives to use spectrum efficiently and to promote competition through bringing about a more competitive market structure. We looked at:
 - use it or lose it requirements,
 - rollout obligations,
 - information provisions,
 - access requirements,
 - spectrum caps;and
 - iii. Identification of any potential uses to which spectrum could be put which raise specific market failure risks and any targeted interventions which might address such risks.
- 7.28 We have set out our preferred approach for auction design and packaging separately and we consider that these are consistent with promoting competition and efficiency.
- 7.29 We concluded that the only general remedy that might be appropriate was the inclusion of an information provision condition in licences to facilitate spectrum trading.
- 7.30 Regarding specific issues and risks, we set out in the June consultation document that we had identified two particular issues where there was potential for spectrum purchase outcomes to result in a downstream market structure that might be less competitive than it might otherwise have been. The first concerned Sky and its possible purchase of geographic interleaved spectrum for aggregation into a sub UK mux for pay TV services. We saw the question of access to premium content as the central issue here. This was not primarily linked to the potential for Sky to acquire geographic interleaved spectrum, or to the impact this might have on market structure. We noted that any competition concerns would be best pursued through our existing reviews concerning Sky's 'Picnic' proposal and our wider review of the Pay TV market, where we published further consultations on both in September 2008^{7, 8}.
- 7.31 The second concerned NGW/Arqiva and its possible acquisition and aggregation of geographic interleaved spectrum for additional multiplexes on DTT. It was uncertain whether a competition concern would arise and if it did there were significant risks involved in seeking to remedy it in the geographic interleaved award..

We took the view at this stage that we should not intervene in the award to remedy any potential impact on competition resulting from the either Sky's or NGW/Arqiva's acquisition of geographic interleaved spectrum. Confining attention to issues potentially relevant to the

⁷ See http://www.ofcom.org.uk/consult/condocs/second_paytv/

⁸ See <http://www.ofcom.org.uk/consult/condocs/picnic/>

first phase awards, we note that respondents to the June consultation paper raised the following issues:

- Some respondents suggested that an information provision licence condition would not facilitate the emergence of a fluid secondary market in spectrum since spectrum is usually traded on an infrequent and bilateral basis. Other respondents generally favoured such a provision, with a number qualifying this with concerns about the need to respect commercial confidentiality and requests to minimise how onerous such an obligation might be.
- A number of respondents raised the issue of the use of Use it or lose it or Roll out conditions. Many expressed the view that the absence of such conditions could encourage spectrum hoarding and so deny valuable use of the spectrum. Some respondents also argued that, in enforcing any such obligation, Ofcom has the ability to determine whether or not spectrum is being used effectively, for example through a five year review.

7.32 In the light of responses and our considerations set out in the Statement, we have concluded for the first phase awards to retain our approach as set out in the June consultation document. The following table sets out our assessment.

Option	Advantages	Disadvantages
Use it or lose it requirements		
Original option stands: No Use it or lose it requirements	Effective and beneficial where it is clear that a significant risk exists that spectrum will be held idle and that such idle holding is inefficient	Difficult in practice to define and detect where spectrum is held idle May have unintended consequences where spectrum use is forced in circumstances where it is not efficient to do so Could act as significant barrier to efficient trading
Rollout obligations		
Original option stands: No Rollout obligations	Directly increases chances that spectrum is utilised and citizens receive benefits where rollout is not commercially attractive	Implies additional costs on spectrum holders and so may distort primary or secondary purchase of spectrum Other solutions are available to achieve same outcome more efficiently; e.g. direct funding Less relevant to geographic interleaved awards where lots are local

Information provisions		
Original option stands: Introduce Information provisions	Publicly available information regarding spectrum ownership and use facilitates value formation, price discovery and hence efficient spectrum trading Likely to be effective in a range of circumstances and market outcomes	Need to recognise appropriately any commercial confidentiality concerns that the public release of the data might raise

Costs to Ofcom

- 7.33 The costs of Ofcom's decision to award the licences relate mainly to the costs of carrying out the award process. The administrative costs of the award process should be small in relation to the benefit generated to the economy.

Business sectors affected

- 7.34 The main business sectors affected by this proposal are television broadcasting, transmission services, programme making and special events and mobile communications service provision.

Conclusion

- 7.35 This impact assessment has analysed the costs and benefits of undertaking the auction of licences for two 8 MHz frequency channels in the ranges 542 MHz to 550 MHz and 758 MHz to 766 MHz, one at Winter Hill (for Manchester) and one at Wenvoe (for Cardiff). Ofcom considers that a single unit ascending bid auction is the most likely option to promote the efficient allocation of the spectrum and to maximise the total value to society over time. On balance the benefits of undertaking the auctions will outweigh any costs to Ofcom or to business.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

Proposal, purpose and intended effect

- 7.36 The purpose of these draft regulations is to permit the transfer of all rights and obligations relating to wireless telegraphy licences auctioned in the Bands, also known as spectrum trading. Ofcom intends that all types of transfers, i.e., outright, concurrent, partial and total transfers will be permitted.

Costs and benefits to business

- 7.37 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment for the Spectrum Trading and Wireless Telegraphy Register Regulations 2004, published in December 2004. It concluded that the likely benefits of spectrum trading greatly outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded (and for whom the benefit of the

spectrum trade should exceed the costs anyway). This analysis of the general benefits of introducing spectrum trading should also apply to wireless telegraphy licences in the Bands.

- 7.38 Ofcom considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers. Ofcom can see no reason why its general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer. It is unlikely that the additional coordination costs for third parties that might arise as a result of concurrent or partial transfers would be significant.

Costs to Ofcom

- 7.39 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up, and including the wireless telegraphy licences in the Bands within the framework should require little additional cost.

Business sectors affected

- 7.40 The main business sectors affected by this proposal are television broadcasting, transmission services, programme making and special events and mobile communications service provision.

Conclusion

- 7.41 Ofcom has assessed the impact of allowing spectrum trading in the Spectrum Band and has found that the costs are likely to outweigh the benefits for all types of transfer.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

Proposal, purpose and intended effect

- 7.42 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences - the Wireless Telegraphy Register.
- 7.43 The intended effect of this proposal is to enable information about the Licences to be published in this Wireless Telegraphy Register. In so doing this should facilitate spectrum trading by, except where security considerations prevent publication of information, providing information which will enable potential buyers to find out, who holds what frequencies and the constraints on the use of the specific frequencies or bands.

Costs and benefits

- 7.44 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register. This proposed amendment to those regulations only has the effect of including the Bands within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.

- 7.45 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for these regulations. Those conclusions were that the benefits of a having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the proposed regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and limited to updating the register for the wireless telegraphy licences in the Bands. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.
- 7.46 Moreover, now that the register has been set up, the additional costs of including the Spectrum Band within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Business sectors affected

- 7.47 The main business sectors affected by this proposal are television broadcasting, transmission services, programme making and special events and mobile communications service provision.

Conclusions

- A1.1 Ofcom's assessment is that the benefits of including the Bands within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2008

Proposal, purpose and intended effect

- 7.48 Following the June 2008 Consultation and Statement on the award of available the spectrum Ofcom has decided to award licences by means of an auction.
- 7.49 The draft Limitation Order to which this RIA relates is intended to allow Ofcom to limit the number of users of spectrum in the Bands through the award of licences, as opposed to exempting from licensing the use of radio equipment in the Bands and so allowing an unlimited number of users.
- 7.50 This will enable Ofcom to proceed with the award of this spectrum by auction. The way that Ofcom will award a limited number of licences for the Bands is set out in the proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 and the proposed Wireless Telegraphy (Licence Award) (No.3) Regulations 2008.

Costs and benefits to business

- 7.51 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Bands are lower than the costs of exempting from licensing the use of radio equipment in the Bands.

- 7.52 The decision to license the Bands, as opposed to making their use licence exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. However, if the use of the Bands were licence exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users co-ordinated with each other. Ofcom's technical research has shown that this would impose large costs due to interference between users. These costs would generally outweigh the benefit of licence exemption.

Costs to Ofcom

- 7.53 The costs to Ofcom of limiting the number of licences in the Bands relate mainly to the costs of awarding the spectrum. Ofcom has made regulations to auction licences for the use of the Band, therefore the costs to Ofcom would be those of carrying out an auction.
- 7.54 In comparison, licence exemption would mean that Ofcom would not incur auction costs. However, as discussed in the previous section, the costs to business is likely to be relatively higher under licence exemption because of the need to incur coordination costs to limit interference with other users and this would be unlikely to lead to the most efficient use of spectrum.
- 7.55 Ofcom also notes that the administrative costs of holding the two awards are likely to be less than the benefit generated for the economy.

Business sectors affected

- 7.56 The main business sectors affected by this proposal are television broadcasting, transmission services, programme making and special events and mobile communications service provision.

Conclusion

- 7.57 Ofcom has assessed the impact of limiting or not limiting the number of licences in the Bands and has concluded that the better option is to limit the number of licences. This is primarily because the number of users that would be likely to use the spectrum under licence exemption is large and would lead to all users incurring substantial costs in terms of interference and coordination with other users.

Annex 1

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 25 November 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/notice542/>, 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 ddr.interleaved@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

DDR Geographic Interleaved Project Team

Spectrum Policy Group

Third floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7783 4303

- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the 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

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Robert Emson on 020 7783 4345.

Confidentiality

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

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

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

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to make the regulations as soon as possible.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

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

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

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

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 www.ofcom.org.uk/consult/.
- 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

4 Consultation question

Do you agree with the proposed statutory instruments set out in this notice for the award of this spectrum? If not, please give your reasons.

STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Licence Award) (No. 2) Regulations
2008**

Made - - - - - ***

Coming into force - - - - - ***

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SCHEDULE 2 — DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER
GROUP WHO IS NOT AN ASSOCIATE

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

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

PART 1

INTRODUCTORY

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 and shall come into force on *[date to be inserted]*.
(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

Interpretation

2. In these Regulations—

- “applicant” means a body corporate making an application for the licence;
“appropriate bidders” means those bidders which made a valid bid in the auction stage.
“associate” means, in relation to an applicant or a bidder, a person who has a material interest in that applicant or bidder;
“auction stage” has the meaning given in regulation 15(1);
“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;
“bid” shall be construed in accordance with regulation 15(2);
“bid form” has the meaning given in regulation 16(1);
“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” means, in relation to an applicant or bidder—
(a) that applicant or bidder;
(b) each associate of that applicant or bidder; and
(c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 2;

(a) 2006 c.36.

“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 bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

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

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

by which that requirement must be fulfilled by that person;

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

“final round” has the meaning given in regulation 18(3)(a);

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“last day for withdrawal” has the meaning given in regulation 9(1);

“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 operating in the frequencies 742.0 MHz to 750.0 MHz at the site in Wenvoe at national grid reference ST110742 in the United Kingdom for a period expiring on a date to be notified by Ofcom to the licensee and on and after that date, operating in the frequencies 542.0 MHz to 550.0 MHz.

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

- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006^(a)) in—
 - (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
 - (ii) any share or shares in the case of which 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;

“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 internet website;

“pounds” means pounds sterling;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Part 5 of these Regulations;

“round extension” shall have the meaning given in regulation 23;

“round price” shall be construed in accordance with regulation 20;

“valid bid” has the meaning given in regulation 22(1);

“valid bid total” has the meaning given in regulation 18;

“winning bid” shall be construed in accordance with regulation 31; and

“winning bidder” means the bidder that submitted the winning bid.

(a) 2006 c.46.

PART 2

APPLICATION STAGE

Applications for the grant of the licence

3. Applications for the grant of the 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 the licence.
- (2) A body corporate may only make one application.
- (3) To apply for the licence, a body corporate must—
- (a) on the day 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 specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by and the warranty set out in Schedule 1 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 bidder group, a document in the form set out in Schedule 2 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
 - (b) by the deadline specified by OFCOM, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of ten thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website no later than one week before whichever is the earlier of that day or that deadline.

PART 3

QUALIFICATION STAGE

Assessment of bidder groups

- 5.—(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 when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).
- (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 bidder group is also an associate of another applicant or is also an applicant.
- (3) Where an applicant determines that a member of its bidder 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, and OFCOM shall specify a further deadline by when each applicant concerned must—
- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or is an applicant; and

- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM.
- (5) If it appears to OFCOM from any application that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—
 - (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
 - (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (6) OFCOM shall record the members of each applicant's bidder group as soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (3) and (5).

Subsequent changes to bidder groups

- 6.—(1) An applicant or a bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group.
- (2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 2 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.

Determination of applicants which are qualified to bid

- 7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.
- (2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant's bidder group.
- (3) In making their determination under paragraph (1) OFCOM shall take into account whether —
 - (a) the grant of the licence to the applicant would be prejudicial to the interests of national security;
 - (b) the applicant is a fit and proper person to hold the licence having regard to the probity of —
 - (i) the applicant;
 - (ii) each member of the applicant's bidder group; and
 - (iii) each director of each member of the applicant's bidder group;
 - (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
 - (d) 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) 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) 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) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) 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) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups.

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

(5) 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.

(6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

Publication of determination

8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(1).

(2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant which is so qualified and shall publish the names of all applicants which are qualified to bid on OFCOM's internet website.

Withdrawal of an application

9.—(1) OFCOM shall notify each applicant qualified to bid 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 internet website.

(2) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall notify all other applicants of the withdrawal.

(3) Where an applicant withdraws its application in accordance with paragraph (2)—

- (a) that applicant shall not be re-admitted to the award process; and
- (b) that applicant's initial deposit shall not be forfeited for that reason.

Determination of number of bidders

10.—(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 9, the initial deposits (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant the licence in accordance with the procedure set out in Part 4 of these Regulations.

(4) Where the number of bidders is more than one, OFCOM shall grant the licence in accordance with the procedure set out in Part 5 of these Regulations.

(5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement of whether OFCOM will proceed to grant the licence in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

Payment of licence fee

11.—(1) Where there is only one bidder, OFCOM shall give notice to that bidder of the day by which that bidder must pay into OFCOM's bank account with accompanying information that identifies the bidder, an amount determined in accordance with paragraph (2).

(2) The amount which the bidder shall pay to OFCOM shall be—

- (a) where the initial deposit has not been forfeited in accordance with regulation 37, an amount equal to the licence fee less the initial deposit; or
- (b) where the initial deposit has been so forfeited, an amount equal to the licence fee.

(3) The licence fee means the sum of ten thousand pounds.

Failure to pay licence fee

12.—(1) If the bidder fails to make payment in accordance with regulation 11, it shall—

- (a) not be entitled to the grant of the licence; and
- (b) not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 37) be forfeited.

Grant of licence

13. Where OFCOM have received from the bidder the required sum in accordance with regulation 11(1), OFCOM shall grant the bidder the licence.

Completion of the award process

14.—(1) After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website the name of the bidder to which the licence has been granted; and
- (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

Auction stage

15.—(1) Where there is more than one bidder, the process for the award of the licence shall consist of the procedure set out in this Part (“auction stage”).

(2) A bid made during the auction stage shall be a bid for the licence.

(3) During the auction stage there shall be one or more rounds for the making of bids.

CHAPTER 2

Bids

Bid requirements

16.—(1) In order to make a bid a bidder must, on a form provided to the bidder by OFCOM (“bid form”), specify the amount that it is willing to pay for the licence.

(2) The amount of the bid shall be determined by the bidder, subject to the restrictions set out in regulation 21.

(3) A bidder must not submit more than one bid in any round.

Requirement for a valid bid in the first round

17.—(1) Any bidder which does not submit a valid bid in the first round shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 37) be forfeited.

Number of rounds

18.—(1) After each round, OFCOM shall determine the total number of valid bids submitted at the round price for that round (“valid bid total”).

(2) There shall be another round where the valid bid total is more than one.

(3) In a round where paragraph (2) does not apply—

(a) that round shall be the final round (“final round”);

(b) OFCOM shall determine the winning bid in accordance with regulation 31.

Participation in subsequent rounds

19. Where there is another round in accordance with regulation 18(2), a bidder may make a bid only if he made a valid bid in the previous round at an amount equal to the round price.

Determination of round prices for rounds

20.—(1) In the first round, the round price shall be fifteen thousand pounds.

(2) In subsequent rounds, the round price shall be determined by OFCOM in accordance with paragraph (3), subject to the limit in paragraph (4).

(3) The round price shall be higher than the round price in the previous round.

(4) The round price shall not be more than twice the round price in the previous round.

Amount of bids

- 21.**—(1) A bid made during the first round shall be at an amount in whole pounds that is—
- (a) at least ten thousand pounds; and
 - (b) not more than fifteen thousand pounds.
- (2) A bid made during a subsequent round shall be at an amount in whole pounds that is—
- (a) more than the amount of the round price for the preceding round; and
 - (b) not more than the amount of the round price for that round.

Valid bids

- 22.**—(1) A bid shall only be taken into consideration for the purposes of determining—
- (a) the valid bid total in accordance with regulation 18(1);
 - (b) the winning bid in accordance with regulation 31(2); and
 - (c) the licence fee payable by the winning bidder in accordance with regulation 31(6)
- if it satisfies the conditions set out in paragraph (2) (“valid bid”).
- (2) The conditions are that—
- (a) the bid is made on a bid form that has been completed in accordance with regulation 16(1);
 - (b) the bid is submitted in accordance with the restriction set out in regulation 16(3);
 - (c) the bid complies with the restrictions set out in—
 - (i) regulation 19; and
 - (ii) regulation 21(1) or (2) (as the case may be); and
 - (d) the completed bid form is submitted to OFCOM in accordance with regulation 24(1) and is received by OFCOM in accordance with regulation 24(2).

CHAPTER 3

Procedure for rounds

Notice to bidders

- 23.**—(1) Before the start of a round, OFCOM shall notify each bidder of—
- (a) the date on which, and the times on that date during which, subject to paragraph (2), the round will be held; and
 - (b) the round price for that round.
- (2) The time notified by OFCOM under paragraph (1)(a) as the end of the round may be treated by a bidder in respect of—
- (a) no more than two rounds; and
 - (b) for each round in respect of which paragraph (3) applies to the bidder, a further round,
- as that time extended by thirty minutes, and OFCOM shall treat that extended time as the end of the round for the purposes of paragraph (1)(a) (“round extension”).
- (3) This paragraph applies to a bidder where—
- (a) in respect of a previous round, the bidder treated the end of that round as extended by thirty minutes in accordance with paragraph (2);
 - (b) the bidder submitted its completed bid form for that round so that it was received by OFCOM by the end of the round so extended; and
 - (c) OFCOM have notified the bidder that they are satisfied that, in respect of that round, circumstances existed which were beyond the bidder’s control which had the effect that

the bidder could not have submitted its bid form so that it was received by OFCOM by the end of the round without such an extension.

(4) Where there is a round extension in accordance with paragraph (2), OFCOM shall notify bidders that—

- (a) the round has been extended; and
- (b) when the round has concluded.

Submission of bid form to OFCOM

24.—(1) Except as provided for in regulation 25, a bidder must submit the completed bid form to OFCOM by using the electronic auction system.

(2) The completed bid form must be received by OFCOM by the time notified by OFCOM under regulation 23(1)(a) as the end of that round.

Alternative method for submission of bid form

25.—(1) Where OFCOM are satisfied that a bidder is unable to submit a bid 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 bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the bid 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 bid forms

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

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

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the bid form in its entirety shall be rejected by OFCOM and the bid submitted on the bid form shall not be a valid bid and accordingly shall not be taken into consideration for the purposes of determining—

- (a) the valid bid total in accordance with regulation 18(1);
- (b) the winning bid in accordance with regulation 31(2); and
- (c) the licence fee payable by the winning bidder in accordance with regulation 31(6).

Notification that bid is not valid

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

Release of information on bids

28.—(1) After the end of a round and before the start of a subsequent round, OFCOM shall notify each bidder of the number of bidders in that round that made—

- (a) a valid bid at the round price for that round; and

- (b) a valid bid at an amount less than the round price for that round.

Additional deposit before first round

29.—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit.

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

Further deposit for rounds

30.—(1) Where in respect of a bid the amount specified by a bidder under regulation 16 is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 29 and under this regulation, but not including any sum forfeited under regulation 37) OFCOM may, having regard to the desirability of securing an efficient outcome of the auction stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and under this regulation, but not including any sum forfeited under regulation 37) is not less than the amount of the highest valid bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and for any rounds following notice being given under this paragraph the bidder shall not submit bids in any round.

CHAPTER 4

Determination of winning bid, grant stage and completion of award process

Determination of the winning bid and the licence fee

31.—(1) Following the final round, OFCOM shall determine the winning bid in accordance with paragraph (2) and the identity of the winning bidder.

(2) Subject to paragraph (4), the winning bid shall be the highest valid bid made in the auction stage.

(3) Where there are no valid bids in the first round, the auction shall not proceed to a subsequent round and there shall be no winning bidder.

(4) Where there is more than one valid bid of equal highest value in a round, OFCOM shall employ a method of random selection amongst those bids to determine which shall be the winning bid.

(5) Where there is only one valid bid in the first round, the licence fee means the sum of ten thousand pounds.

(6) Subject to paragraphs (5) and (7), the licence fee shall be the amount of the highest valid bid in the auction stage that was not the winning bid.

(7) Where paragraph (4) applies, the licence fee shall be the amount of the winning bid.

Notification of results of the auction stage

32. Following the determination of the winning bid and the determination of the licence fee under regulation 31, OFCOM shall notify the winning bidder of the winning bid and the licence fee.

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

33.(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) is an amount that is less than the amount of the winning bidder's licence fee calculated in accordance with regulation 31—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b);
- (b) the winning bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the winning bidder, a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the winning bidder's licence fee calculated in accordance with regulation 31 and the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37).

(3) Where the winning bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the winning bidder the licence.

(4) Where the winning bidder does not satisfy the requirement set out in paragraph (1)(b), regulation 35 shall apply.

Procedure where amount of winning bidder's deposit is greater than or equal to the licence fee

34.—(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 31, OFCOM shall—

- (a) grant the winning bidder the licence;
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) and the amount of the winning bidder's licence fee calculated in accordance with regulation 31, but not any interest which has accrued on the deposit or deposits as the case may be.

Licences not awarded

35.—(1) Where a winning bidder does not satisfy the requirement set out in paragraph 33(1)(b)—

- (a) the winning bidder shall not be entitled to the grant of the licence under these Regulations;
- (b) shall not receive a refund of its initial deposit and any sum paid as a deposit under regulations 29 and 30, which shall (where not already forfeited under regulation 37) be forfeited; and
- (c) OFCOM shall select the winning bidder from a list of appropriate bidders in accordance with the order of precedence set out in paragraph (3) and shall follow the procedures in regulation 32 and either regulation 33 or 34 (as the case may be).

(2) Should regulation 33 apply in relation to that bidder, and that bidder fails to satisfy the requirement set out in paragraph 33(1)(b), OFCOM shall follow the procedures in regulation 32 and either regulation 33 or 34 (as the case may be) in respect of the next bidder in the order of precedence set out in paragraph (3) until the licence is awarded or the list of appropriate bidders is exhausted.

(3) The order of precedence amongst the list of appropriate bidders shall be determined by the sums bid by those bidders such that higher sums shall prevail over lower sums and, where any two or more bidders bid sums of equal value, OFCOM shall employ a method of random selection to determine the precedence among those bidders.

(4) The licence fee payable by the winning bidder selected under 35(1)(c) shall be calculated in accordance with regulation 31(6).

Completion of the award process

36.—(1) After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website details of all valid bids made by each bidder, the name of the person to whom the licence was granted, and the amount of the licence fee paid; and
- (b) refunding to—
 - (i) applicants which were not qualified or which withdrew in accordance with regulation 9; and
 - (ii) bidders which were not the winning bidder;

the initial deposit and any sum paid as a deposit under regulation 29 and 30 (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

PART 6

ACTIVITY RULES

Forfeit of deposit and exclusion from award process

37. 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 38 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulation 29 and 30 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

Events

38. The events referred to in regulation 37, 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;
- (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 6(3);
 - (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.

PART 7

MISCELLANEOUS

General power of exclusion

39. OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of the licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold the licence.

Notification to OFCOM

40. 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 internet 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 internet 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 internet website.

Changes to timing or location

41.—(1) Subject to regulations 42 and 43, 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 all reasonable steps to notify the applicants or bidders (as the case may be) that—
- (a) delivery must be made on a different day or within different times on that day or at a different place;
 - (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

- 42.**—(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 all 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 all reasonable steps to notify bidders of a revised time for the end of the round.
- (3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all 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

- 43.**—(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 all reasonable steps to notify bidders of its determination under paragraph (1);
 - (b) disregard the bids made in that round;
 - (c) resume the award procedure from the end of the previous round (or, if there was no previous round, from the start of the first round).
- (3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 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 determine whether it is necessary in order to secure a fair and efficient outcome—
- (a) to disregard bids made in one or more rounds; and
 - (b) to 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 resume the award process from the start of the first round.
- (5) Where paragraph (4) applies, OFCOM shall take all reasonable steps to notify bidders of its determination under that paragraph.

Refunds

- 44.** 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.

[date]

Philip Rutnam
Partner, Spectrum Policy
For and by authority of the Office of Communications

SCHEDULE 1

Regulation 4(3)(a)(i)

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

Applicant's contact address (if different from registered office)

Name of contact person

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

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. Bidder group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 ("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 bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 2 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 7 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of the licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold the licence;
- (c) state 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 and provide a description of any such collusion;

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

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 bidder group or its directors or officers.

7. Warranty

Provide the following warranty as part of your application—

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

- “(a) the persons authorised in section 2 of the applicant's application have read and understood the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have the licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant, true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 37 and 38 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”.

**DOCUMENT FOR MEMBER OF APPLICANT'S 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 bidder group who is not an associate] as a member of the applicant/bidder’s bidder group as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 (“the Regulations”) for the purpose of the award process under the Regulations.

Under regulation 7(2) 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 37 and 38 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.

1. Applicant/bidder

In relation to regulations 7(2), 37 and 38 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 bidder group who is not an associate] is not a member of any other applicant’s or bidder’s bidder group.

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

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

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

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

- (f) consents to be a member of the applicant/bidder’s bidder group;
- (g) is not a member of any other applicant’s or bidder’s bidder group; and
- (h) is aware of the provisions in regulations 37 and 38 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

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

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

STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Licence Award) (No. 3) Regulations
2008**

Made - - - - - ***

Coming into force - - - - - ***

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SCHEDULE 1 — APPLICATION FORM AND WARRANTY

SCHEDULE 2 — DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER
GROUP WHO IS NOT AN ASSOCIATE

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

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

PART 1 INTRODUCTORY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No. 3) Regulations 2008 and shall come into force on *[date to be inserted]*.

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

Interpretation

2. In these Regulations—

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

“appropriate bidders” means those bidders which made a valid bid in the auction stage.

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

“auction stage” has the meaning given in regulation 15(1);

“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;

“bid” shall be construed in accordance with regulation 15(2);

“bid form” has the meaning given in regulation 16(1);

“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” means, in relation to an applicant or bidder—

(a) that applicant or bidder;

(b) each associate of that applicant or bidder; and

(c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 2;

(a) 2006 c.36.

“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 bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

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

- (a) the time,
 - (b) the date, or
 - (c) the date and the time on that date,
- by which that requirement must be fulfilled by that person;

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

“final round” has the meaning given in regulation 18(3)(a);

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“last day for withdrawal” has the meaning given in regulation 9(1);

“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 operating in the frequencies 758.0 MHz to 766.0 MHz at the site at Winter Hill at national grid reference SD660144 in the United Kingdom;

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

- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006(a)) in—
 - (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
 - (ii) any share or shares in the case of which 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;

“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 internet website;

“pounds” means pounds sterling;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Part 5 of these Regulations;

“round extension” shall have the meaning given in regulation 23;

“round price” shall be construed in accordance with regulation 20;

“valid bid” has the meaning given in regulation 22(1);

“valid bid total” has the meaning given in regulation 18;

“winning bid” shall be construed in accordance with regulation 31; and

“winning bidder” means the bidder that submitted the winning bid.

(a) 2006 c.46.

PART 2

APPLICATION STAGE

Applications for the grant of the licence

3. Applications for the grant of the 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 the licence.
- (2) A body corporate may only make one application.
- (3) To apply for the licence, a body corporate must—
- (a) on the day 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 specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by and the warranty set out in Schedule 1 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 bidder group, a document in the form set out in Schedule 2 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
 - (b) by the deadline specified by OFCOM, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of ten thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website no later than one week before whichever is the earlier of that day or that deadline.

PART 3

QUALIFICATION STAGE

Assessment of bidder groups

- 5.—(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 when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).
- (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 bidder group is also an associate of another applicant or is also an applicant.
- (3) Where an applicant determines that a member of its bidder 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, and OFCOM shall specify a further deadline by when each applicant concerned must—
- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or is an applicant; and

- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM.
- (5) If it appears to OFCOM from any application that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—
 - (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
 - (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (6) OFCOM shall record the members of each applicant's bidder group as soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (3) and (5).

Subsequent changes to bidder groups

- 6.—(1) An applicant or a bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group.
- (2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.
- (3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 2 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.

Determination of applicants which are qualified to bid

- 7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.
- (2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant's bidder group.
- (3) In making their determination under paragraph (1) OFCOM shall take into account whether —
 - (a) the grant of the licence to the applicant would be prejudicial to the interests of national security;
 - (b) the applicant is a fit and proper person to hold the licence having regard to the probity of —
 - (i) the applicant;
 - (ii) each member of the applicant's bidder group; and
 - (iii) each director of each member of the applicant's bidder group;
 - (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
 - (d) 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) 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) 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) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) 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) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups.

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

(5) 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.

(6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

Publication of determination

8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(1).

(2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant which is so qualified and shall publish the names of all applicants which are qualified to bid on OFCOM's internet website.

Withdrawal of an application

9.—(1) OFCOM shall notify each applicant qualified to bid 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 internet website.

(2) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall notify all other applicants of the withdrawal.

(3) Where an applicant withdraws its application in accordance with paragraph (2)—

- (a) that applicant shall not be re-admitted to the award process; and
- (b) that applicant's initial deposit shall not be forfeited for that reason.

Determination of number of bidders

10.—(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 9, the initial deposits (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant the licence in accordance with the procedure set out in Part 4 of these Regulations.

(4) Where the number of bidders is more than one, OFCOM shall grant the licence in accordance with the procedure set out in Part 5 of these Regulations.

(5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement of whether OFCOM will proceed to grant the licence in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

Payment of licence fee

11.—(1) Where there is only one bidder, OFCOM shall give notice to that bidder of the day by which that bidder must pay into OFCOM's bank account with accompanying information that identifies the bidder, an amount determined in accordance with paragraph (2).

(2) The amount which the bidder shall pay to OFCOM shall be—

- (a) where the initial deposit has not been forfeited in accordance with regulation 37, an amount equal to the licence fee less the initial deposit; or
- (b) where the initial deposit has been so forfeited, an amount equal to the licence fee.

(3) The licence fee means the sum of ten thousand pounds.

Failure to pay licence fee

12.—(1) If the bidder fails to make payment in accordance with regulation 11, it shall—

- (a) not be entitled to the grant of the licence; and
- (b) not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 37) be forfeited.

Grant of licence

13. Where OFCOM have received from the bidder the required sum in accordance with regulation 11(1), OFCOM shall grant the bidder the licence.

Completion of the award process

14.—(1) After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website the name of the bidder to which the licence has been granted; and
- (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

Auction stage

15.—(1) Where there is more than one bidder, the process for the award of the licence shall consist of the procedure set out in this Part (“auction stage”).

(2) A bid made during the auction stage shall be a bid for the licence.

(3) During the auction stage there shall be one or more rounds for the making of bids.

CHAPTER 2

Bids

Bid requirements

16.—(1) In order to make a bid a bidder must, on a form provided to the bidder by OFCOM (“bid form”), specify the amount that it is willing to pay for the licence.

(2) The amount of the bid shall be determined by the bidder, subject to the restrictions set out in regulation 21.

(3) A bidder must not submit more than one bid in any round.

Requirement for a valid bid in the first round

17.—(1) Any bidder which does not submit a valid bid in the first round shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 37) be forfeited.

Number of rounds

18.—(1) After each round, OFCOM shall determine the total number of valid bids submitted at the round price for that round (“valid bid total”).

(2) There shall be another round where the valid bid total is more than one.

(3) In a round where paragraph (2) does not apply—

(a) that round shall be the final round (“final round”);

(b) OFCOM shall determine the winning bid in accordance with regulation 31.

Participation in subsequent rounds

19. Where there is another round in accordance with regulation 18(2), a bidder may make a bid only if he made a valid bid in the previous round at an amount equal to the round price.

Determination of round prices for rounds

20.—(1) In the first round, the round price shall be fifteen thousand pounds.

(2) In subsequent rounds, the round price shall be determined by OFCOM in accordance with paragraph (3), subject to the limit in paragraph (4).

(3) The round price shall be higher than the round price in the previous round.

(4) The round price shall not be more than twice the round price in the previous round.

Amount of bids

- 21.—**(1) A bid made during the first round shall be at an amount in whole pounds that is—
- (a) at least ten thousand pounds; and
 - (b) not more than fifteen thousand pounds.
- (2) A bid made during a subsequent round shall be at an amount in whole pounds that is—
- (a) more than the amount of the round price for the preceding round; and
 - (b) not more than the amount of the round price for that round.

Valid bids

- 22.—**(1) A bid shall only be taken into consideration for the purposes of determining—
- (a) the valid bid total in accordance with regulation 18(1);
 - (b) the winning bid in accordance with regulation 31(2); and
 - (c) the licence fee payable by the winning bidder in accordance with regulation 31(6)
- if it satisfies the conditions set out in paragraph (2) (“valid bid”).
- (2) The conditions are that—
- (a) the bid is made on a bid form that has been completed in accordance with regulation 16(1);
 - (b) the bid is submitted in accordance with the restriction set out in regulation 16(3);
 - (c) the bid complies with the restrictions set out in—
 - (i) regulation 19; and
 - (ii) regulation 21(1) or (2) (as the case may be); and
 - (d) the completed bid form is submitted to OFCOM in accordance with regulation 24(1) and is received by OFCOM in accordance with regulation 24(2).

CHAPTER 3

Procedure for rounds

Notice to bidders

- 23.—**(1) Before the start of a round, OFCOM shall notify each bidder of—
- (a) the date on which, and the times on that date during which, subject to paragraph (2), the round will be held; and
 - (b) the round price for that round.
- (2) The time notified by OFCOM under paragraph (1)(a) as the end of the round may be treated by a bidder in respect of—
- (a) no more than two rounds; and
 - (b) for each round in respect of which paragraph (3) applies to the bidder, a further round,
- as that time extended by thirty minutes, and OFCOM shall treat that extended time as the end of the round for the purposes of paragraph (1)(a) (“round extension”).
- (3) This paragraph applies to a bidder where—
- (a) in respect of a previous round, the bidder treated the end of that round as extended by thirty minutes in accordance with paragraph (2);
 - (b) the bidder submitted its completed bid form for that round so that it was received by OFCOM by the end of the round so extended; and
 - (c) OFCOM have notified the bidder that they are satisfied that, in respect of that round, circumstances existed which were beyond the bidder’s control which had the effect that

the bidder could not have submitted its bid form so that it was received by OFCOM by the end of the round without such an extension.

(4) Where there is a round extension in accordance with paragraph (2), OFCOM shall notify bidders that—

- (a) the round has been extended; and
- (b) when the round has concluded.

Submission of bid form to OFCOM

24.—(1) Except as provided for in regulation 25, a bidder must submit the completed bid form to OFCOM by using the electronic auction system.

(2) The completed bid form must be received by OFCOM by the time notified by OFCOM under regulation 23(1)(a) as the end of that round.

Alternative method for submission of bid form

25.—(1) Where OFCOM are satisfied that a bidder is unable to submit a bid 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 bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the bid 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 bid forms

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

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

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the bid form in its entirety shall be rejected by OFCOM and the bid submitted on the bid form shall not be a valid bid and accordingly shall not be taken into consideration for the purposes of determining—

- (a) the valid bid total in accordance with regulation 18(1);
- (b) the winning bid in accordance with regulation 31(2); and
- (c) the licence fee payable by the winning bidder in accordance with regulation 31(6).

Notification that bid is not valid

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

Release of information on bids

28.—(1) After the end of a round and before the start of a subsequent round, OFCOM shall notify each bidder of the number of bidders in that round that made—

- (a) a valid bid at the round price for that round; and

- (b) a valid bid at an amount less than the round price for that round.

Additional deposit before first round

29.—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit.

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

Further deposit for rounds

30.—(1) Where in respect of a bid the amount specified by a bidder under regulation 16 is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 29 and under this regulation, but not including any sum forfeited under regulation 37) OFCOM may, having regard to the desirability of securing an efficient outcome of the auction stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and under this regulation, but not including any sum forfeited under regulation 37) is not less than the amount of the highest valid bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and for any rounds following notice being given under this paragraph the bidder shall not submit bids in any round.

CHAPTER 4

Determination of winning bid, grant stage and completion of award process

Determination of the winning bid and the licence fee

31.—(1) Following the final round, OFCOM shall determine the winning bid in accordance with paragraph (2) and the identity of the winning bidder.

(2) Subject to paragraph (4), the winning bid shall be the highest valid bid made in the auction stage.

(3) Where there are no valid bids in the first round, there shall be no winning bidder and the auction shall not proceed to a subsequent round.

(4) Where there is more than one valid bid of equal highest value in a round, OFCOM shall employ a method of random selection amongst those bids to determine which shall be the winning bid.

(5) Where there is only one valid bid in the first round, the licence fee means the sum of ten thousand pounds.

(6) Subject to paragraphs (5) and (7), the licence fee shall be the amount of the highest valid bid in the auction stage that was not the winning bid.

(7) Where paragraph (4) applies, the licence fee shall be the amount of the winning bid.

Notification of results of the auction stage

32. Following the determination of the winning bid and the determination of the licence fee under regulation 31, OFCOM shall notify the winning bidder of the winning bid and the licence fee.

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

33.(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) is an amount that is less than the amount of the winning bidder's licence fee calculated in accordance with regulation 31—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b);
- (b) the winning bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the winning bidder, a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the winning bidder's licence fee calculated in accordance with regulation 31 and the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37).

(3) Where the winning bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the winning bidder the licence.

(4) Where the winning bidder does not satisfy the requirement set out in paragraph (1)(b), regulation 35 shall apply.

Procedure where amount of winning bidder's deposit is greater than or equal to the licence fee

34.—(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 31, OFCOM shall—

- (a) grant the winning bidder the licence;
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29 and 30, but not including any sum forfeited under regulation 37) and the amount of the winning bidder's licence fee calculated in accordance with regulation 31, but not any interest which has accrued on the deposit or deposits as the case may be.

Licences not awarded

35.—(1) Where a winning bidder does not satisfy the requirement set out in paragraph 33(1)(b)—

- (a) the winning bidder shall not be entitled to the grant of the licence under these Regulations;
- (b) shall not receive a refund of its initial deposit and any sum paid as a deposit under regulations 29 and 30, which shall (where not already forfeited under regulation 37) be forfeited; and
- (c) OFCOM shall select the winning bidder from a list of appropriate bidders in accordance with the order of precedence set out in paragraph (3) and shall follow the procedures in regulation 32 and either regulation 33 or 34 (as the case may be).

(2) Should regulation 33 apply in relation to that bidder, and that bidder fails to satisfy the requirement set out in paragraph 33(1)(b), OFCOM shall follow the procedures in regulation 32 and either regulation 33 or 34 (as the case may be) in respect of the next bidder in the order of precedence set out in paragraph (3) until the licence is awarded or the list of appropriate bidders is exhausted.

(3) The order of precedence amongst the list of appropriate bidders shall be determined by the sums bid by those bidders such that higher sums shall prevail over lower sums and, where any two or more bidders bid sums of equal value, OFCOM shall employ a method of random selection to determine the precedence among those bidders.

(4) The licence fee payable by the winning bidder selected under 35(1)(c) shall be calculated in accordance with regulation 31(6).

Completion of the award process

36.—(1) After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website details of all valid bids made by each bidder, the name of the person to whom the licence was granted, and the amount of the licence fee paid; and
- (b) refunding to—
 - (i) applicants which were not qualified or which withdrew in accordance with regulation 9; and
 - (ii) bidders which were not the winning bidder;

the initial deposit and any sum paid as a deposit under regulation 29 and 30 (where such deposits have not been forfeited under regulation 37) but not any interest which has accrued on the deposits.

PART 6

ACTIVITY RULES

Forfeit of deposit and exclusion from award process

37. 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 38 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulation 29 and 30 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

Events

38. The events referred to in regulation 37, 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;
- (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 6(3);
 - (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.

PART 7

MISCELLANEOUS

General power of exclusion

39. OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of the licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold the licence.

Notification to OFCOM

40. 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 internet 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 internet 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 internet website.

Changes to timing or location

41.—(1) Subject to regulations 42 and 43, 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 all reasonable steps to notify the applicants or bidders (as the case may be) that—
- (a) delivery must be made on a different day or within different times on that day or at a different place;
 - (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

- 42.**—(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 all 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 all reasonable steps to notify bidders of a revised time for the end of the round.
- (3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all 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

- 43.**—(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 all reasonable steps to notify bidders of its determination under paragraph (1);
 - (b) disregard the bids made in that round;
 - (c) resume the award procedure from the end of the previous round (or, if there was no previous round, from the start of the first round).
- (3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 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 determine whether it is necessary in order to secure a fair and efficient outcome—
- (a) to disregard bids made in one or more rounds; and
 - (b) to 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 resume the award process from the start of the first round.
- (5) Where paragraph (4) applies, OFCOM shall take all reasonable steps to notify bidders of its determination under that paragraph.

Refunds

- 44.** 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.

[date]

Philip Rutnam
Partner, Spectrum Policy
For and by authority of the Office of Communications

SCHEDULE 1

Regulation 4(3)(a)(i)

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

Applicant's contact address (if different from registered office)

Name of contact person

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

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. Bidder group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (No. 3) Regulations 2008 ("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 bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 2 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 7 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of the licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold the licence;
- (c) state 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 and provide a description of any such collusion;

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

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 bidder group or its directors or officers.

7. Warranty

Provide the following warranty as part of your application—

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

- “(a) the persons authorised in section 2 of the applicant's application have read and understood the Wireless Telegraphy (Licence Award) (No. 3) Regulations 2008 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have the licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant, true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 37 and 38 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”.

DOCUMENT FOR MEMBER OF APPLICANT'S 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 bidder group who is not an associate] as a member of the applicant/bidder's bidder group as defined in the Wireless Telegraphy (Licence Award) (No. 3) Regulations 2008 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 7(2) 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 37 and 38 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.

1. Applicant/bidder

In relation to regulations 7(2), 37 and 38 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 bidder group who is not an associate] is not a member of any other applicant's or bidder's bidder group.

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

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

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

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

- (f) consents to be a member of the applicant/bidder's bidder group;
- (g) is not a member of any other applicant's or bidder's bidder group; and
- (h) is aware of the provisions in regulations 37 and 38 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

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

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

 STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS
**The Wireless Telegraphy (Limitation of Number of Spectrum
Access Licences) (No. 2) Order 2008**
Made - - - -*Coming into force* - -

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 29(1) to (3) of the Wireless Telegraphy Act 2006^(a) (“the Act”).

Before making the Order 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 the notice in accordance with section 122(4)(c) of the Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008 and shall come into force on *[insert date]*.

(2) This Order shall not extend to the Channel Islands or to the Isle of Man.

Limitation of licences

2.—(1) The following paragraphs of this Order apply to the grant of wireless telegraphy licences for the use of the frequencies 742.0 MHz to 750.0 MHz and 542.0 MHz to 550.0 MHz at the site in Wenvoe at the national grid reference ST110742 in the United Kingdom and for the use of frequencies 758.0 MHz to 766.0 MHz at the site in Winter Hill at the national grid reference SD660144 in the United Kingdom.

(2) The persons to whom the wireless telegraphy licences for the use of the frequencies 742.0 MHz to 750.0 MHz and 542.0 MHz to 550.0 MHz at the site in Wenvoe at the national grid reference ST110742 in the United Kingdom will be granted shall be determined by OFCOM using the procedure set out in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008^(b).

(3) The persons to whom the wireless telegraphy licences for the use of the frequencies 758.0 MHz to 766.0 MHz at the site in Winter Hill at the national grid reference SD660144 in the United Kingdom will be granted shall be determined by OFCOM using the procedure set out in the Wireless Telegraphy (Licence Award) (No. 3) Regulations 2008^(c).

(4) The criteria for determining the number of wireless telegraphy licences to be granted are that the number of wireless telegraphy licences to be granted should be the number which is most

^(a) 2006 c. 36.

^(b) S.I. 2008/*to be completed*

^(c) S.I. 2008/*to be completed*

likely to secure the optimal use of the electromagnetic spectrum and promote competition in the provision of electronic communication services having regard to the matters set out in section 3(1) and (2) of the Act.

[*date to be inserted*]

Philip Rutnam
Partner, Spectrum Policy
For and by authority of the Office of Communications

EXPLANATORY NOTE

(This note is not part of the Order)

STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Register) (Amendment) (No. 2)
Regulations 2008**

Made - - - -

Coming into force - -

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006^(a) (“the Act”).

Before making the 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 the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2008 and shall come into force on [*date to be inserted*].

Amendment of the Wireless Telegraphy (Register) Regulations 2004

2. Part 4 of the Schedule to the Wireless Telegraphy (Register) Regulations 2004^(b) is amended by inserting in the list at Column 2 after “422.0 MHz to 424.0 MHz” the following frequencies in order: “542.0 to 550.0 MHz”; “742.0 to 750.0 MHz”; and “758.0 to 766.0 MHz”.

[*date to be inserted*]

Philip Rutnam
Partner, Spectrum Policy
For and by authority of the Office of Communications

^(a) 2006 c. 36.

^(b) S.I. 2004/3155 as amended by S.I. 2006/340, S.I. 2006/1808, S.I. 2007/381, S.I. 2007/3389, S.I. 2008/689 and S.I. 2008/2104.

EXPLANATORY NOTE

(This note is not part of the Regulations)

STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Spectrum Trading) (Amendment)
(No. 2) Regulations 2008**

Made - - - -

Coming into force - -

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006^(a) (“the Act”).

Before making the 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 the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008 and shall come into force on *[date to be inserted]*

Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2004

2. Part 4 of the Schedule to the Wireless Telegraphy (Spectrum Trading) Regulations 2004^(b) is amended by inserting in the list at Column 2 after “422.0 MHz to 424.0 MHz” the following frequencies in order: “542.0 to 550.0 MHz”; “742.0 to 750.0 MHz”; and “758.0 to 766.0 MHz”.

[date to be inserted]

Philip Rutnam
Partner, Spectrum Policy
For and by authority of the Office of Communications

^(a) 2006 c. 36.

^(b) S.I. 2004/3154 as amended by S.I. 2006/339, S.I. 2006/1807, S.I. 2007/380, S.I. 2007/3387, S.I. 2008/688 and S.I. 2008 No. 2105.

EXPLANATORY NOTE

(This note is not part of the Regulations)