



# Notice of Ofcom's proposal to make regulations in connection with the award of 10 GHz, 28 GHz, 32 GHz and 40 GHz

Consultation

Publication date: 7 August 2007

Closing Date for Responses: 17 September 2007



# Contents

Section		Page
1	Summary	1
2	Notice	3
3	General effect of the proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2007	6
4	General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2007	21
5	General effect of the proposed Wireless Telegraphy (Register) (Amendment)(No.2) Regulations 2007	25
6	General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2007	26
7	Regulatory Impact Assessments	27
<b>Annex</b>		<b>Page</b>
1	Responding to this consultation	41
2	Ofcom's consultation principles	43
3	Consultation response cover sheet	44
4	Consultation question	46
5	Draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007	47
6	Draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2007	48
7	Draft Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2007	49
8	Draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Regulations 2007	50

## Section 1

# Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make to make four statutory instruments in connection with the award of wireless telegraphy licences for use of the following spectrum bands 10.125-10.225 GHz paired with 10.475-10.575 GHz, 27.8285-28.0525 GHz paired with 28.8365-29.0605 GHz, 28.0525-28.1645 GHz paired with 29.0605-29.1725 GHz, 28.1925- 28.3045 GHz paired with 29.2005-29.3125 GHz, 28.3325-28.4445 GHz paired with 29.3405-29.4525 GHz, 31.815-32.571 GHz paired with 32.627-33.383 GHz and 40.50-42.00 GHz paired with 42.00-43.50 GHz. Copies of each of the four 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 the Bands (see Statement entitled Award of available spectrum: 10 GHz, 28 GHz, 32 GHz and 40 GHz published on 7 August 2007. An information memorandum setting out relevant information which potential applicants for the licences should take into account has also been published.

### **Proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2007**

- 1.2 These regulations set out the process and rules for award of licences to operate within the Bands. Ofcom intends to hold an auction, 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 chosen and rules prescribing how applicants and bidders must conduct themselves during the award process. 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 2007**

- 1.3 Ofcom has decided that the licences 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 2007**

- 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) Order 2007**

- 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 Band. 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 four statutory instruments. Comments or representations with respect to the four proposed statutory instruments are invited by 17 September 2007.

## 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"): 10.125-10.225 GHz paired with 10.475-10.575 GHz ("10 GHz band"), 27.8285-28.0525 GHz paired with 28.8365-29.0605 GHz, 28.0525-28.1645 GHz paired with 29.0605-29.1725 GHz, 28.1925-28.3045 GHz paired with 29.2005-29.3125 GHz, 28.3325-28.4445 GHz paired with 29.3405-29.4525 GHz ("28 GHz band"), 31.815-32.571 GHz paired with 32.627-33.383 GHz ("32 GHz band") and 40.50-42.00 GHz paired with 42.00-43.50 GHz ("40 GHz band"). The number of licences to be awarded and the precise frequencies which each licence will cover will be determined by the award process.
- 2.1 On 7 August 2007, Ofcom published its decision to hold an award process in a statement entitled Award of available spectrum: 10 GHz, 28 GHz, 32 GHz and 40 GHz (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);
  - Consultation carried out by Ofcom in June 2006 (the 'June consultation') - see <http://www.ofcom.org.uk/consult/condocs/10ghz/>;
  - Public discussion document published in January 2007 (the 'January discussion document') see <http://www.ofcom.org.uk/consult/condocs/10-40GHz/>.

## Notice of proposals

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

## Proposed auction regulations

- 2.3 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 2007 in order to allow an auction 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.
- 2.4 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

- 2.5 Ofcom has decided that the licences to be awarded for the Band 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 Trading)

(Amendment) (No. 2) Regulations 2007. A draft of the proposed regulations is set out at Annex 6.

- 2.6 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**

- 2.7 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 2007. A draft of the proposed regulations is set out at Annex 7.
- 2.8 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**

- 2.9 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to the Band for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Band. 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 2007. A draft of the proposed order is set out at Annex 8.
- 2.10 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**

- 2.11 Comments or representations with respect to the four proposed regulations are invited by 17 September 2007. This consultation period is in excess of the minimum statutory requirement to reflect the fact that changes have been made to Ofcom's proposals for the Bands as a result of the June Consultation and responses. Comments should be sent to:

Robert Emson

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

robert.emson@ofcom.org.uk

020 7783 4375

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

2.13 Hard copies of this notice and the proposed regulations can be obtained from:

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

robert.emson@ofcom.org.uk

020 7783 4375

2.14 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 2007

## 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 to the Isle of Man.

## The proposed regulations

- 3.3 The proposed regulations set out the procedure and rules that will apply for the award of licences to operate within the Bands. The award process includes an application stage, a qualification stage and two alternative procedures for the award of licences, where the procedure to be followed depends on the number of bidders. 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 4 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 bidder group). The date, time and place for submission of applications will be published on the Ofcom website.
- 3.6 The application form must also be accompanied by an application document in the form provided for in the regulations. The application document 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 who 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 £25,000. 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 may make changes to the composition of its bidder group after the application stage, provided such changes are notified to Ofcom and accompanied by revised versions of the documents required in the application stage and provided that they do not result in a breach of the activity rules provided for at Part 6 of the proposed regulations.
- 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. However, 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 at the end of the first stage of the award process ("the principal stage"), and they may 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 licences. A bidder is committed to purchase a 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.

### **Meaning of band, sub-band, lot and paired frequency range**

- 3.20 In the proposed regulations the meaning of band, sub-band, lot and paired frequency range are to be construed in accordance with the table in Schedule 1. Each band consists of two sub-bands. Within each band a specific number of lots are available; a lot consists of two separate blocks of frequencies of a defined bandwidth, one in each sub-band of the band. The licence awarded to a winning bidder will include paired frequency ranges whose bandwidth is equal to the total bandwidth of the lots that were included in its winning bid.

### **Procedure where there is only one bidder**

- 3.21 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. The bidder must complete a paired frequency range selection menu, which will list the paired frequency ranges in each band that are available to the bidder. Ofcom will send the bidder a notice stating the day and time by which the bidder must return its completed paired frequency range selection menu and pay to Ofcom the appropriate sum as a licence fee.
- 3.22 The bidder must complete the paired frequency range selection menu by selecting at least one of the 45 paired frequency ranges available. The bidder may not

select more than one paired frequency range from any one band. The paired frequency range selection menu must be signed by two authorised persons of the bidder and returned to Ofcom by the time specified in the notice. If the bidder fails to return the paired frequency range selection menu by the time specified, fails to pay the licence fee or does not select at least one of the available paired frequency ranges, the bidder will not receive a refund of its initial deposit (if this has not already been forfeited) and will not be entitled to the grant of a licence.

- 3.23 The licence fee will be the total of the prices per paired frequency range set by Ofcom (as indicated on the paired frequency range selection menu) for each paired frequency range selected by the bidder.
- 3.24 The sum which the bidder must pay to Ofcom will be the appropriate licence fee less the initial deposit, unless the initial deposit has already been forfeited, in which case the full licence fee shall be payable. Ofcom will grant the bidder a licence for the paired frequency ranges selected on the paired frequency range selection menu once it has received payment of the appropriate licence fee.
- 3.25 Following the grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee, the paired frequency ranges in respect of which the licence was granted and the total licence fee paid. Ofcom will also refund 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**

- 3.26 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 eight chapters as follows:
- chapter 1 gives an overview of the principal stage and assignment stage of the award process
  - chapter 2 explains the structure of the principal stage
  - chapter 3 sets out the procedure for primary bid rounds
  - chapter 4 sets out the procedure for supplementary bids round and the requirement for the final principal stage deposit
  - chapter 5 details the determination of the winning principal stage bids and conclusion of the principal stage
  - chapter 6 sets out the procedure for the assignment of paired frequency ranges to winning principal stage bidders for bands where exactly one winning principal stage bid includes lots in that band
  - chapter 7 sets out the procedure for the assignment of paired frequency ranges to winning principal stage bidders for bands where more than one winning principal stage bid includes lots in that band
  - chapter 8 details the grant stage of the auction

- 3.27 Regulation 14 provides that where there is more than one bidder the award process consists of two stages, the principal stage and the assignment stage. It explains that during the principal stage bids may be made for 'lots'. The number of lots available in each band is set out, and the regulation provides that bids are to be made for a number of lots in one or more bands ('a selection of lots'). It goes on to provide that during the assignment stage specific frequencies ('paired frequency ranges') corresponding to the lots won by successful bidders in the principal stage will be assigned, and then that the licences for the assigned frequencies will be granted to the successful bidders in accordance with the procedure set out in Chapter 8.
- 3.28 Regulation 14 (3) of the proposed regulations sets out the number of lots available in each band as follows:
- (a) ten lots in the national 10 GHz band
  - (b) two lots in the national 28 GHz band
  - (c) one lot in the first sub-national 28 GHz band
  - (d) one lot in the second sub-national 28 GHz band
  - (e) one lot in the third sub-national 28 GHz band
  - (f) six lots in the national 32 GHz band
  - (g) six lots in the national 40 GHz band
- 3.29 Regulation 15 of the proposed regulations explains the auction rounds during the principal stage and the minimum participation requirement. During the principal stage of the auction there will be one or more rounds for the submission of primary bids ("primary bid rounds") and a further round for the submission of supplementary bids ("supplementary bids round").
- 3.30 A bid made during a primary bid round is a bid for a selection of lots at an amount (in whole pounds) which will be the total amount of the round prices in that primary bid round for the selection of lots. A bidder may not submit more than one primary bid in a primary bid round.
- 3.31 A bid made during the supplementary bids round ("supplementary bid") will be a bid for a selection of lots at an amount (in whole pounds) which the bidder will determine (subject to the requirements of regulation 23 of the proposed regulations). A bidder will not be able to submit more than one supplementary bid for each different selection of lots. The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in a primary bid made by that bidder, but a bidder cannot submit more than two hundred supplementary bids for selections of lots which are different from the selections of lots that were comprised in primary round bids made by the bidder.
- 3.32 The minimum participation requirement is that a bidder must submit a valid primary bid in the first primary bid round. Any bidder which does not meet the minimum participation requirement will be excluded from the award process and will not receive a refund of its initial deposit or any sum that the bidder has paid as a

deposit under regulation 19 which will be forfeited (unless already forfeited under regulation 63 of the proposed regulations).

- 3.33 Regulation 16 of the proposed regulations explains how the number of primary bid rounds is determined. Where for a least one band the total number of lots in that band specified in primary bids made during that round ('the bid total') is greater than the number of lots that are available in that band ('the available total'), then there will be another primary bid round. Where for each band the bid total is less or equal to the available total then there will be no further primary bid rounds and there will be a supplementary bids round. This regulation also gives Ofcom the ability, in specified circumstances, to move straight to the supplementary bids round without having further primary bid rounds even though the bid total is greater than the available total in one or more bands.
- 3.34 In the first primary bid round, the round price per lot for a lot in a particular band is set out in Schedule 6 of the proposed regulations. In subsequent primary bid rounds the round price per lot for a lot in a particular band will increase only where the total number of lots in that band that were included in bids made in the preceding round ('the bid total') exceeds the total number of lots available in that band ('the available total'). The round price for a lot in a particular band will not be more than twice the amount of the round price for lots in that band during the previous primary bid round.
- 3.35 Regulation 18 provides that for each primary bid round a number of points (known as 'eligibility points') will be attributed to each bidder, and that a number of eligibility points will also be attributed to each lot selected in a primary bid. The calculation of a bidder's eligibility points is set out in regulation 20, while the number of eligibility points to be attributed to a lot is set out in Schedule 7. The number of eligibility points attributed to a selection of lots that a bidder bids for in a primary bid round cannot be greater than the number of eligibility points attributed to the bidder for that primary bid round.
- 3.36 Regulation 20 sets out how the number of eligibility points attributed to each bidder is calculated. For the first primary bid round the number of these eligibility points will be a number equal to the total amount the bidder has on deposit (including the initial deposit and any additional sum that the bidder chooses to pay by way of deposit under regulation 19) divided by ten thousand. If the resulting number is a fraction then this will be rounded down to the nearest whole number. The number of eligibility points attributed to a primary round bidder cannot exceed forty-two.
- 3.37 When a bidder makes a valid primary round bid the number of eligibility points attributed to the selection of lots comprised in that bid (according to the table in Schedule 7 to the Regulations) will be the number of eligibility points attributable to the bidder for the next primary bid round (if any). Therefore a bidder's eligibility to bid on lots cannot increase during primary bid rounds. If a bidder does not make a valid primary round bid then its eligibility points reduce to zero for any subsequent round.
- 3.38 To be 'valid', and therefore taken into account when determining the winning principal stage bids and the price to be paid for those winning bids, a primary bid must satisfy conditions which are set out in regulation 21 of the proposed regulations. These conditions are that:
- the bid is the only primary bid submitted by the bidder in that primary bid round

- it must be made on a correctly completed primary bid form provided by Ofcom
- it must be submitted using the electronic auction system (or an alternative method, as provided for in regulation 27)
- it must be received by the time notified by Ofcom (or within an extension period, as provided for in regulation 28)
- the number of lots selected in a band must not be greater than the available total for that band
- where the selection of lots includes lots in the national 10 GHz band at least two such lots must be selected
- the total number of eligibility points attributed to the selection of lots comprised in the bid must not be greater than the number of eligibility points attributed to the bidder for that primary bid round.

3.39 Regulation 22 of the proposed regulations sets out the conditions which supplementary bids must satisfy in order to be 'valid'. These conditions are that:

- a bidder can only submit one supplementary bid for each different selection of lots,
- a bidder cannot submit more than 200 supplementary bids for selections of lots which are different from the selection of lots comprised in primary round bids by that bidder,
- a bid must be made on a correctly completed supplementary bids form supplied by Ofcom and submitted using the electronic auction system (or an alternative method, as provided for in regulation 36) and received by the time notified by Ofcom (or during an extension period, as provided for in regulation 37),
- for each band the number of lots selected by the bidder must not be greater than the available total in that band, where the selection of lots includes lots in the national 10 GHz band at least two such lots must be selected, and
- the amount of the supplementary bid must satisfy certain requirements set out in regulation 23.

3.40 The requirements about the amount of the supplementary bid are that

- It must not be less than the total amount of the round prices in the first primary round for the selection of lots comprised in the supplementary bid.
- If the supplementary bid is for a selection of lots for which the bidder also made a primary round bid, then the supplementary bid amount must be greater than the highest amount which that bidder made for that selection in a primary bid round.
- If a bidder did not make a valid primary bid in the final primary bid round, or the total number of eligibility points attributed to the selection of lots in the supplementary bid exceeds those attributed to the bidder in the final primary bid round, the supplementary bid must not exceed the total of the round prices for the lots in the latest primary round in which the bidder had sufficient eligibility points to bid for that selection of lots.



## Procedure for primary bid rounds

- 3.41 Prior to the start of the first primary bid round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make primary bids, the round price for each band and the eligibility points attributed to the bidder for the primary round as determined in accordance with regulation 20.
- 3.42 The bidding for each primary bid round will be by the means of an electronic auction system. To make a primary bid a bidder must complete a form provided by Ofcom and specify in respect of one or more bands how many lots in each of those bands the bidder wishes to include in a licence at the round price for that band, and specify an amount in whole pounds that the bidder is willing to bid for that licence (being the total of the round prices set by Ofcom for the lots comprised in the bid).
- 3.43 If a bidder is unable to submit a primary bid using the electronic auction system there is provision to submit a completed primary bid form by means of an alternative method, subject to certain conditions that are set out in regulation 27.
- 3.44 If Ofcom does not receive a completed primary bid form from a bidder within the required time period for an auction round, it will allow an extension period, provided that the completed primary 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 of the primary bid rounds. However, where a bidder submits its primary bid form after the time notified to bidders as the close of the round, but within the extension period time, then if Ofcom is satisfied that the bidder could not, using reasonable endeavours, submit its form within the notified round time for that primary bid round, Ofcom will allow the bidder to have another extension period for use in a subsequent primary bid round.
- 3.45 Where any primary 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 primary 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 primary bid form will not be taken into consideration for the purposes of determining the winning combination of principal stage bids, the base price payable by a winning principal stage bidder, or the calculation of the bid total for a band under regulation 16.
- 3.46 If a bidder submits a primary bid which is not valid, Ofcom will notify the bidder and will explain why it is not valid.
- 3.47 After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there are no further primary bid rounds), Ofcom will notify bidders of the bid total for each band for that primary bid round.
- 3.48 Regulation 32 of the proposed regulations provides for the payment to Ofcom of a further sum in pounds as a deposit during the primary bid rounds. The further sum required from a 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 primary bid that the bidder made before Ofcom issued the notification. If a bidder fails to comply with the Ofcom notification then their eligibility points in any



further primary bid rounds after the time when the bidder failed to comply with the notification will be zero.

### **Procedure for supplementary bids round and final principal stage deposit**

- 3.49 Prior to the start of the supplementary bids round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make supplementary bids and the date and times on that date when bidders must make a further deposit in accordance with regulation 40 of the proposed regulations.
- 3.50 The bidding in the supplementary bids round will be by means of the electronic auction system. To make a supplementary bid, a bidder must complete a form provided by Ofcom (a 'supplementary bids form') specifying in respect of one or more bands how many lots in each of those bands the bidder wishes to include in a licence and specify an amount (in whole pounds) that the bidder wishes to pay for that licence.
- 3.51 If a bidder is unable to submit a completed supplementary bid form using the electronic auction system, regulation 36 makes provision for the bidder to submit a completed supplementary bids form by means of an alternative method, subject to certain conditions.
- 3.52 If Ofcom have not received a completed supplementary bids form by the time notified by Ofcom as the end of the supplementary bids round then Ofcom will allow an additional time of sixty minutes for receipt of the completed supplementary bids form.
- 3.53 Where a supplementary bids 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 supplementary bids 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, then if the incompleteness or defect relates to the entire form then all of the bids on the form will be rejected, and if the incompleteness or defect relates to just one or some of the bids on the form then only those bids will be rejected. Rejected bids will not be taken into consideration for the purposes of determining the winning combination of principal stage bids or the base price payable by a winning principal stage bidder.
- 3.54 If a bidder submits a supplementary bid which is not valid, Ofcom will notify the bidder and will explain why it is not valid.
- 3.55 Under regulation 40 each bidder, by a deadline specified by Ofcom, must pay into Ofcom's bank account a further sum so that the bidder has a total deposit which is not less than the bidder's highest valid primary bid or the bidder's highest valid supplementary bid (whichever is the higher). Where a bidder fails to comply with regulation 40 Ofcom will notify the bidder and that bidder will be excluded from the award process, will not receive a refund of its initial deposit or any other subsequent deposits and all of its primary bids (and any supplementary bids) will be deemed invalid and will not be taken into consideration for the purposes of determining the winning combination of principal stages bids nor the base price payable by a winning principal stage bidder.

## **Determination of winning principal stage bids and conclusion of principal stage**

- 3.56 Following the end of the supplementary bids round, Ofcom will determine the winning principal stage bids. The winning principal stage bids will be the valid principal stage bids that comprise the winning combination of principal stage bids. The winning combination of principal stage bids will be the combination of valid principal stage bids having the highest total value of amounts bid, where within that combination:
- There is at most one valid principal stage bid from any one bidder; and
  - In respect of each band, the bid total in that band for the bids included in the combination is not greater than the total number of lots available in that band. .
- 3.57 Where there is more than one combination of valid principal stage bids which result in the highest total value, the winning combination of principal stage bids will be that combination of principal stage bids which has the highest total number of eligibility points attributable to it. Ofcom will determine the winning combination of principal stage bids by employing a method of random selection where there is more than one combination of valid principal stage bids with the highest total value and each combination has the same number of eligibility points attributable to it.
- 3.58 The winning of a lot in the principal stage does not confer any right to specific frequencies; rather, it only confers the right to a block of frequencies within a particular band, with certain specified characteristics. The assignment stage described below determines which paired frequency ranges will be included in the licence granted to a winning bidder.
- 3.59 Regulation 42 requires Ofcom to determine a price for each winning principal stage bid (a 'base price'), in accordance with Schedule 8 of the proposed regulations.
- 3.60 Following determination of the winning principal stage bids, the winning combination of the principal stage bids and determination of the base price, Ofcom will notify each winning principal stage bidder of the number of lots for which it has submitted a winning principal stage bid and the base price for that winning bid. Ofcom shall notify each bidder of the identity of the winning principal stage bidders and the number of lots in each band for which winning principal stage bidders submitted a winning bid. Ofcom shall 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.

## **Assignment of paired frequency ranges to winning principal stage bidders for bands where one winning principal stage bid includes lots in that band**

- 3.61 Regulation 44 of the proposed regulations sets out the procedure where exactly one winning principal stage bid includes all of the lots in a band. Ofcom shall assign to that winning bidder a paired frequency range comprising all of the frequencies in that band.
- 3.62 Regulation 45 of the proposed regulations sets out the procedure where only one winning principal stage bid includes lots in a band, but that bid does not include all of those lots. Ofcom shall notify the winning bidder of the paired frequency ranges in that band that are available for selection and the date and time by which the

selection must be received by Ofcom. The paired frequency range selection must be made on a paired frequency range selection form provided by Ofcom and submitted by way of the electronic auction system, unless Ofcom gives prior approval to an alternative submission method. The bidder can only submit one completed paired frequency range selection form to Ofcom.

- 3.63 Where any paired frequency range selection 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 paired frequency range selection form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm Ofcom's understanding, the paired frequency range selection form will be rejected by Ofcom and Ofcom will determine which paired frequency range to assign to the bidder. If the bidder does not submit a completed paired frequency range selection form in accordance with the regulations then Ofcom will determine which paired frequency range to assign to the bidder.

**Assignment of paired frequency ranges to winning principal stage bidders for bands where more than one winning principal stage bid includes lots in that band**

- 3.64 Regulation 46 provides for a further round of bidding to take place (the 'assignment stage round') in relation to those bands where lots in the bands were selected in more than one winning principal stage bid.
- 3.65 Ofcom will notify each bidder which paired frequency ranges it can bid for in accordance with regulation 47 (see paragraph 3.67 below). A bid made during the assignment stage round (an 'assignment stage bid') is a bid for a paired frequency range at an amount in whole pounds.
- 3.66 A bidder is not required to submit an assignment stage bid, but a bidder can only submit one assignment stage bid for each of the paired frequency ranges notified to it by Ofcom.
- 3.67 Regulation 47 of the proposed regulations sets out the procedure for the determination of the paired frequency ranges for which each bidder can bid. For each band to which the assignment stage round relates, the paired frequency ranges available to a bidder in an assignment stage round will be the paired frequency ranges which satisfy specified conditions. These conditions relate to the bandwidth of the paired frequency range, the need to ensure that paired frequency ranges are available for assignment to all of the other bidders who made winning principal stage bids that included lots in that band, and a requirement that any frequencies in the band that are not assigned to bidders should form a single paired frequency range.
- 3.68 Regulation 48 of the proposed regulations requires each bidder to pay an additional sum by way of deposit by a deadline specified by Ofcom, so that the total amount of each bidder's deposit is not less than the amount calculated in accordance with the formula set out in regulation 48(2).
- 3.69 To be 'valid', an assignment stage bid must satisfy conditions which are set out in regulation 49. These are:

- that a bidder may not submit more than one assignment stage bid for each of the paired frequency ranges available to that bidder
  - the assignment stage bid must be made on an assignment stage bid form that has been completed in accordance with regulation 52
  - the completed assignment stage bid form must be submitted and received by Ofcom in accordance with regulation 53.
- 3.70 Prior to each assignment stage round Ofcom will notify each bidder who submitted a winning principal stage bid that included lots in bands to which the assignment stage round relates of the paired frequency ranges in those bands that are available to them, and the date and times on that date within which they can make assignment stage bids.
- 3.71 As noted in paragraph 3.63, a bidder does not have to make an assignment stage bid for any of the paired frequency ranges available to the bidder. However, if a bidder does not make a valid assignment stage bid then it shall be deemed to have made a valid bid of zero for the purposes of determining the winning combination of assignment stage bids and the additional price payable for those winning assignment stage bids.
- 3.72 Regulation 52 of the proposed regulations sets out the procedure for making bids in the assignment stage. A bid for a paired frequency range must be submitted on a form provided to the bidder by Ofcom ('assignment stage bid form') and must specify an amount that the bidder is willing to pay, in addition to the base price for that bidder's winning principal stage bid, for a licence that includes that paired frequency range.
- 3.73 Under regulation 53 of the proposed regulations, bidding in the assignment stage will be by the means of an electronic auction system (unless, in exceptional circumstances, Ofcom agrees that the bidder may submit a bid by means of an alternative method). Regulation 55 provides for a bidder to submit a completed assignment bid form up to thirty minutes after the end of the assignment bid round in exceptional circumstances.
- 3.74 Where an assignment stage bid form is incomplete or defective but Ofcom 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 assignment stage bid form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm Ofcom's understanding, then if the incompleteness or defect relates to the entire form then all of the bids on the form will be rejected, and if the incompleteness or defect relates to just one or some of the bids on the form then only those bids will be rejected. Rejected bids will not be taken into consideration for the purposes of determining the winning combination of assignment stage bids or the additional price payable in respect of a winning assignment stage bid.
- 3.75 The winning assignment stage bids will be determined separately for each band to which the assignment stage round relates in accordance with regulation 57. In respect of each such band, the winning assignment stage bids will be those valid assignment stage bids for paired frequency ranges in that band that comprise the winning combination of assignment stage bids. The winning combination of assignment stage bids (unless there is a tie) will be the valid combination of assignment stage bids having the highest total value of amounts bid.

- 3.76 A valid combination of assignment stage bids is any combination of valid assignment stage bids where within that valid combination there is one valid assignment bid from each winning principal stage bidder whose winning principal stage bid includes lots in the band, there is no overlap between the frequency ranges comprised in valid assignment stage bids and any frequencies in that band which are not included in valid assignment stage bids form a single paired frequency range.
- 3.77 If there is a tie (i.e. two valid combinations with the equal highest value of valid assignment stage bids), Ofcom will use a random selection method amongst the tied valid combinations to determine the winning combination.
- 3.78 Regulation 58 requires Ofcom to determine a price for each winning assignment stage bid (an 'additional price') in accordance with Schedule 9 of the proposed regulations.
- 3.79 Following completion of the assignment stage Ofcom will notify each winning bidder of: each paired frequency range for which it has submitted a winning assignment stage bid and the additional price for the winning assignment stage bid.

## Grant of licences

- 3.80 Regulation 60 provides that the licence fee payable by a winning principal stage bidder will be the total of the base price (determined by Ofcom in accordance with Schedule 8 of the regulations) and, for each winning assignment stage bid made by that bidder, the additional price for that winning assignment stage bid (determined by Ofcom in accordance with Schedule 9 of the regulations).
- 3.81 Regulation 61 of the proposed regulations sets out the procedure where amount of the bidder's deposit is less than the amount of the licence fee. Ofcom will notify the bidder of the date and time 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 this sum, Ofcom will grant the bidder a licence for all of the paired frequency ranges assigned to the bidder under Chapter 6 or Chapter 7 of the regulations. If the bidder does not pay the required sum, then it will not be entitled to the grant of a licence or receive a refund of any of its deposit.
- 3.82 Regulation 62 of the proposed regulations sets out the procedure where amount of the bidder's deposit is greater than or equal to the licence fee. Ofcom will grant the bidder a licence for all of the paired frequency ranges assigned to the bidder under Chapter 6 or Chapter 7 of the regulations. Ofcom will refund to the winning principal stage bidder the difference (if any) between the amount of the bidder's deposit and the licence fee.
- 3.83 After granting the licences and paying any refunds to winning principal stage bidders, Ofcom will complete the award process by publishing the details of all valid principal stage bids and all valid assignment stage bids made by each bidder, the names of the persons to whom the licences were granted, the details of the paired frequency ranges for which those licences were granted and the details of the licence fees paid.

## Activity rules

- 3.84 Part 6 of proposed regulations sets out the activity rules that apply to applicants which have qualified to bid and to bidders. Regulation 64 provides that where

Ofcom are satisfied that any of the events set out in regulation 66 have occurred, or are occurring, 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 64 (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.

- 3.85 Regulation 65 provides that where a bidder has been excluded from the award process during the principal auction stage, then all of that bidder's primary and supplementary bids will be deemed invalid and not taken into account for the purposes of determining the winning combination of principal stage bids or the base price payable by a winning principal stage bidder. Where a bidder is excluded during the assignment stage all their assignment stage bids will be deemed invalid and will not taken into account for the purposes of determining the winning combination of assignment stage bids or the additional price payable by a winning principal stage bidder.
- 3.86 Regulation 66 of the proposed regulations sets out the details of the events referred to in regulation 64. 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 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 66(i) of the proposed regulations.
- 3.87 With regard to changes occurring in the membership of a bidder group, regulation 66(i) provides that changes occurring as a result of a person ceasing to be a member of the bidder group are not breaches of the activity rules. Also, bidders and applicants are able to add members to their bidder groups under the procedure set out at regulation 6. However, the addition of associates is only permitted as a result of merger and acquisition activity where such activity is for a purpose not related to the award process. Also, a change which leads to a member of a bidder's bidder group also becoming a member of another bidder's bidder group will be a breach of the activity rules and may lead to the exclusion of either or both bidders concerned and the forfeiture of deposits.

## Miscellaneous

- 3.88 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.
- 3.89 Regulation 68 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 fax, personal delivery or email.
- 3.90 Regulation 69 of the proposed regulations enables Ofcom to alter the deadline 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.

- 3.91 Regulation 70 of the proposed regulations provides that where it would be impracticable to start or end a round at the times notified to bidders, or to 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.
- 3.92 Regulation 71 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 auction round (or, if there was no previous round, the start of the first primary bid round).
- 3.93 If it is not possible to continue the award process 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 auction for which bids are not disregarded, or to resume from the start of the first primary bid round.
- 3.94 Regulation 72 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 2007

### 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) (the "2004 Regulations").

### The existing 2004 Regulations on spectrum trading

- 4.5 Both 2004 Regulations and the amending Regulations (SI 2006/339) are available at [www.opsi.gov.uk](http://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](http://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 listed in Column 1 of each Part of the Schedule which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part
- 4.8 Regulation 6(a)(i) to (iv) of the 2004 Regulations authorises the transfer of rights and obligations relating to parts of the licensed range of frequencies for licences granted for the Public Mobile Operator sector, the Fixed Wireless Access sector, Point to Point Fixed Links licences and Scanning Telemetry licences.
- 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 which 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.
- 4.15 The concept of concurrent licence holding was new to the system of UK wireless telegraphy licensing. Under such a holding each of the concurrent licensees will jointly hold the same rights and obligations under a licence.

### **Circumstances where transfers are not authorised under the 2004 Regulations**

- 4.16 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.
- 4.17 These are:
- Where the licence holder (or all of the concurrent holders) and the transferee have not consented to the transfer.
  - Where 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 pay up its outstanding instalments under a licence and then approach Ofcom with a proposed transfer.
  - Where Ofcom has served notice under section 1E(1) of the Wireless Telegraphy Act 1949 of a proposal to revoke or vary the licence. That notice is served around two months prior to the final revocation decision. In the case of a notice concerning a licence variation this will not in fact be an obstacle to trade because if the licensee consents to the variation being made and, if that happened, the licence amendment would be implemented quickly.
- 4.18 Finally, a transfer is not authorised where Ofcom has not consented to it being made.

### **Notification of a trade under the 2004 Regulations**

- 4.19 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**

- 4.20 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 10 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.
- 4.21 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 11 of the 2004 Regulations.

### **Enacting the transfer under the 2004 Regulations**

- 4.22 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.
- 4.23 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).
- 4.24 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 2007 (the "proposed amending regulations")**

- 4.25 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 10.125-10.225 and 10.475-10.575 MHz, 27.8285-28.4445 and 28.8365-29.4525 GHz, 31.815-33.383 GHz and 40.5-43.5 GHz.
- 4.26 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)

4.27 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 2007

### 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) (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 are available on the website [www.opsi.gov.uk](http://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](http://www.ofcom.org.uk).

### The amendments to the 2004 regulations which are proposed in the draft Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2007

- 5.5 A draft of the proposed regulations 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 2007) 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 2007

### 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, 10.125-10.225 and 10.475-10.575 MHz, 27.8285-28.4445 and 28.8365-29.4525 GHz, 31.815-33.383 GHz and 40.5-43.5 GHz, Ofcom will grant a limited number of licences, depending on the outcome of the award process to be held under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 (see sections 2 and 3 of this Notice for more information on the proposed award process).
- 6.6 The proposed order consequently provides that Ofcom will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedures set out in the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2007. The proposed order will be made and enter into force at the same time as the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2007.

## Section 7

# Regulatory Impact Assessments

- 7.1 The analysis presented here, when read in conjunction with the rest of this document, represents a Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003 (the 'Act'). You should send any comments on this RIA to Ofcom by the closing date for this consultation. Ofcom will consider all comments before deciding whether to implement the proposals.
- 7.2 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 policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally Ofcom will carry out RIAs where proposals would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

## Regulatory Impact Assessment – the draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007

### Proposal, purpose and intended effect

- 7.3 This section provides an update to the Regulatory Impact Assessment found in the June consultation<sup>1</sup>. It differs from the original RIA in that it takes into account the changes to packaging and auction design proposed by Ofcom in the January discussion document<sup>2</sup>. In addition it comments on the responses to the June consultation which are relevant both to these changes and the original IA.

### Introduction

- 7.4 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 current uses of the spectrum in each band, the potential demand for spectrum in each band, the likely spectrum packaging requirements and auction design.
- 7.5 The IA in the June consultation considered the advantages and disadvantages of a number of options for packaging and awarding the spectrum. The January discussion document presented Ofcom's revised packaging proposals in the light of responses to the June consultation and the implications for the appropriate auction design. This RIA focuses on Ofcom's choice of auction design and new packaging proposals presented in the January discussion document as well as addressing any comments made on the Consultation IA and responses to the January discussion document.

---

<sup>1</sup> The consultation document can be found at <http://www.ofcom.org.uk/consult/condocs/10ghz>

<sup>2</sup> The discussion document can be found at <http://www.ofcom.org.uk/consult/condocs/10-40GHz/>

7.6 The key proposals set out in the June consultation for the proposed award of licences in the bands were as follows:

- Spectrum to be licensed, with all licences to be awarded through a single auction;
- A technology and service neutral approach should be used;
- The auction to take the form of a simple simultaneous multiple round auction (SMRA), with no need to introduce combinatorial bidding;
- The winning bidders to be those which submitted the highest bids for each licence; and
- A minimum price of £50,000 to be set for each licence.

The consultation also explained Ofcom's proposal for deferring the award of licences in the 40 GHz band.

7.7 The key proposals in the consultation for the spectrum packaging were as follows:

Band	Spectrum packages
10 GHz	One UK licence of 2x100 MHz
28 GHz	Two UK licences each of 2x112 MHz  Three 'geographically limited' licences each of 2x112 MHz, with varying geographical coverage (see Annex 9 of the June consultation for maps illustrating this)
32 GHz	Six UK licences each of 2x126 MHz
<b>TOTAL</b>	<b>12 licences</b>

### Consultation responses on spectrum packaging and auction design

7.8 Ofcom received several responses to the consultation that commented on the auction design and packaging of spectrum<sup>3</sup>. In summary these comments were:

- It would be more appropriate to offer smaller lots in the 10 GHz band in order to maximise flexibility and overall efficiency of use. There was however no real consensus about the appropriate size of lots; for example a number of respondents suggested that two lots of 2x50 MHz be made available while another suggested five lots of 2x20 MHz.

<sup>3</sup> The responses may be found at <http://www.ofcom.org.uk/consult/condocs/10ghz/responses/>

- One respondent suggested that there should be larger lots in the 32 GHz band and if larger lots were not available the respondent would be exposed to aggregation risk.
- Interest was expressed in acquiring spectrum in the 40 GHz band.
- One respondent suggested that the packaging of lots and auction design should ensure that aggregation risk to bidders was minimised as far as possible.

In the light of these responses Ofcom put forward amended proposals for spectrum packaging and auction design in the January discussion document.

## Packaging

7.9 In response to the comments summarised above, Ofcom reviewed the appropriate way to package the available spectrum. The two changes it made were the division of the 10 GHz band into ten lots each of 2x10 MHz, although subject to a requirement that each bidder bids for at least two such lots (i.e. a minimum of 2x20 MHz), and the inclusion of the 40 GHz band in the award, divided into six lots of 2x250 MHz.

7.10 The table below summarises the advantages and disadvantages of Ofcom's original proposal (as outlined in the June consultation) and Ofcom's revised proposal in the January discussion document, which forms the basis of the award that is covered by the proposed Regulations.

Band & option	Advantages	Disadvantages
<b>10 GHz</b>		
<b>Original option: one UK-wide paired lot of 2x100 MHz</b>	Eliminates complementarity issue, thereby reducing aggregation risk to some bidders and substantially simplifying auction design.	Bidders requiring a single unpaired lot may have to co-ordinate their bidding with other parties or face acquiring more spectrum than they require.  Lot size too big for some potential bidders. Again, bidders would have to co-ordinate their bidding with other parties or face acquiring more spectrum than they require.
<b>Revised plan: 10 UK-wide paired lots of 2x100 MHz</b>	Smaller lots should maximise flexibility and overall efficiency of use.	Introduces complementarity, but this is not a major problem as long as there is an appropriate auction design, which can address this issue. This is one of the reasons why Ofcom has proposed to switch to a combinatorial clock auction format.
<b>28 GHz</b>		
<b>Original option stands: two UK-wide</b>	Appears to be consistent with	If a bidder wanted unpaired spectrum it would have to co-ordinate with another



<b>paired lots of 2x112 MHz</b>	demand  Offering paired lots simplifies auction design.	bidder also wanting unpaired spectrum or might have to acquire more than it required. However Ofcom has had no indication that this might be the case.
<b>Original option stands: three geographically limited paired lots of 2x112 MHz</b>	The auction design is simplified where the licence regions used in the 28 GHz auction held in 2000 are aggregated into a single coverage area.	Does not cater for (limited) interest shown in smaller regional lots. Ofcom has considered a request to change the geographical coverage of one of the lots to complement a respondent's existing licence coverage area. However this is not practicable because none of the available lots alone has coverage that would complement the respondent's coverage area.
<b>32 GHz</b>		
<b>Original option stands: six UK-wide paired lots of 2x126 MHz</b>	Matches prospective bidders' demand.  Similarly sized packages to other bands increases substitutability across bands.	There may be complementarity between lots in this band for those bidders who require larger lots. However with Ofcom's proposed combinatorial clock auction format bidders can bid for multiple lots without facing aggregation risks.
<b>40 GHz</b>		
<b>Original option: award to be deferred</b>	Apparent lack of demand may not justify cost of making award.	
<b>Revised plan: six UK-wide paired lots of 2x250 MHz</b>	Appears to be consistent with demand  Consistent with Ofcom's spectrum management objectives.  Maximises flexibility of spectrum offerings	There may be complementarity between lots in this band for those bidders who require larger lots. However with Ofcom's proposed combinatorial clock auction format bidders can bid for multiple lots without facing aggregation risks.

7.11 Having considered the relative merits of the various options in terms of the likely strength of demand for the different packages (in each of the bands), the consequences for auction design and the likely impact on downstream competition, Ofcom plans to auction the following spectrum packages:

- 10 GHz: 10 UK-wide paired lots of 2x100 MHz
- 28 GHz: Two UK-wide paired lots of 2x112 MHz

Three 'geographically limited' paired lots of 2x112 MHz, each with varying geographical coverage

- 32 GHz: Six UK-wide paired lots of 2x126 MHz
- 40 GHz: Six UK-wide paired lots of 2x250 MHz

## Auction design options for the different packages

7.12 In the June consultation Ofcom concluded that using a simultaneous, multiple round process would be the most appropriate approach for the award of lots in the bands under consideration, rather than sequential or single round formats. In addition Ofcom did not believe that there would be any benefits to introducing combinatorial bidding to the auction design given the lots proposed.

7.13 In response to the comments Ofcom received following publication of the June consultation document and the January discussion document and the changes made to packaging of auction lots, Ofcom reviewed the auction design. In particular Ofcom took into account a key issue, which was that the revised packaging arrangements had the effect that, from a bidder's perspective, lots in particular bands might be substitutable or complementary .

7.14 The table below reviews the advantages and disadvantages of key auction design features:

Auction feature	Advantages	Disadvantages
<b>Auction format</b>  Sequential award of lots		A sequential sale is problematic since bidders will not know the price to be paid for substitute lots.
Multiple round (ascending bids)	In the absence of competition concerns, considered to produce more efficient outcomes as bidders can learn and refine their own valuations from observing behaviour of competitors over the course of the auction.  Allowing bidders to respond to relative prices reduces substitution risks.	Award process more complex than a single round award, but not so great as to justify using a significantly less efficient auction format.
Single round (sealed bids)	Simpler to administer.  May encourage participation when there are bidder asymmetries	Does not enable bidders to gain information on lot values from other bidders' behaviour. This is of particular relevance for this auction, given the concerns about common value uncertainty (see table below)
Use of package (combinatorial) bidding	Key benefit is where there are strong complementarities amongst lots. Given the packaging proposed, this is particularly relevant for this auction.	Makes an SMRA auction significantly more complex, especially if all possible combinations are allowed.

<b>Nature of lots</b>		
Generic lots	Simplifies the auction	Requires follow-up action to assign specific spectrum packages.
Specific lots	Allows bidders to express a preference between lots, which is appropriate where there are material differences between lots. Given the packaging proposed this is not particularly relevant for this auction.	Significantly more complex for bidders than award with generic lots.
<b>Pricing rule</b>		
2 <sup>nd</sup> price auctions	Provides incentives for bidders to bid true values, so reducing risk of bid shading and strategic demand reduction	May be relatively complex to calculate the amount payable by winners, although this burden falls on the auctioneer rather than bidder.

7.15 Ofcom's view is that using a simultaneous multiple round process is the most appropriate approach for the award of these bands, rather than sequential or single round formats. In addition, given the changes to spectrum packaging it is necessary to cater for bidding on combinations of lots. The combinatorial clock auction that Ofcom is planning for this award is designed to do this in a way that avoids the complexities of combinatorial bidding within an SMRA.

7.16 The table below summarises the advantages and disadvantages of Ofcom's original proposal for auction design, as outlined in the June consultation, and Ofcom's combinatorial clock auction design.

<b>Auction format</b>	<b>Advantages</b>	<b>Disadvantages</b>
<b>Common value uncertainty</b>	There is likely to be common value uncertainty in this auction because some bidders are likely to want to use this spectrum to provide similar services to common markets. Common value uncertainty can result in inefficient outcomes.	
Original proposal: simple SMRA	Effective in terms of reducing common value uncertainty; bidders can observe how their rivals' demand changes in response to prices.	
Combinatorial clock auction ("CCA")	Effective, as for SMRA outlined above. Best and final offers may provide richer information than the simple SMRA about bidders' willingness to substitute demand across lots.	

<b>Aggregation risk</b>	Given likely demand in the 32 GHz band and changes to packaging, particularly in the 10 GHz band, bidders are likely to view lots as complementary. Bidders may need to submit bids for packages of lots.	
Original proposal: simple SMRA		<p>A simple SMRA is not effective at addressing aggregation risk and bidders risk being left with stranded lots.</p> <p>A combinatorial SMRA would be complex for bidders, with the onus on them to make extensive bids in each round.</p>
CCA	<p>Under a CCA it is relatively straightforward for a bidder to submit bids for packages of lots.</p> <p>All bids are mutually exclusive, thereby minimising aggregation risks.</p>	
<b>Threshold problem</b>	Small bidders (wanting few lots) may find it difficult to operate in implicit consortia capable of displacing larger bidders (wanting to aggregate many lots), even though their collective valuation may be higher.	
Original proposal: simple SMRA	Simple SMRA, with no package bidding, would avoid the threshold problem. However this would not be appropriate given packaging and need to make package bids.	Combinatorial SMRA (as would be appropriate given the proposed packaging) introduces threshold risk.
CCA	Bidders will have more information about rival bids if best and final offers are released each round than under SMRA. This may facilitate bidding by implicit consortia, possibly reducing threshold problems.	CCA introduces threshold risk.
<b>Complexity</b>	Other things being equal, simpler auctions are preferable from the perspective of bidders. The more straightforward and transparent the auction is, the more likely they are to develop an efficient bidding strategy, and the less likely they are to make mistakes. If the auction format is so complicated that bidders are unable to learn from the progress of the auction or bid their preferences, then this could introduce inefficiencies and risk a sub-optimal allocation of the available spectrum.	
Original proposal: simple SMRA		<p>The requirement for package bidding makes an SMRA very complex for bidders to understand since they would have to have full understanding about all the possible packages they would purchase at each price.</p> <p>In addition bidders would have to take</p>

		<p>into account the aggregation risk they face when making each bid.</p> <p>These factors may lead to an inefficient outcome.</p>
CCA	<p>The CCA is more straightforward for bidders since they would not need to submit bids on the full range of possible packages (as with SMRA) but on their preferred package at each given price.</p> <p>The use of generic lots reduces the number of packages bidders have to consider in the clock stage.</p> <p>The CCA aids price discovery for bidders which should enable an efficient strategy for bidding (and hence an efficient auction outcome).</p>	Ofcom accepts that the proposed arrangements involve a degree of complexity. However, this complexity arises from the packaging proposals (the reasons for which are set out above) rather than from the auction design.
<b>Strategic bidding</b>	Strategic behaviour can distort the efficient outcome of the auction. Examples include: signalling, price manipulation, punishment, parking and bid shading.	
Original proposal: simple SMRA		SMRA may be vulnerable to strategic behaviour which can distort the auction outcome and reduce efficiency. For example since only the highest bids on specific lots are ultimately binding there are likely to be strong incentives for strategic bidding.
CCA	Stronger incentives for straightforward bidding since any bid submitted in any round could potentially become a winning bid.	
<b>Strategic demand reduction</b>	Strategic demand reduction is most likely to be a problem in auctions where there are a few bidders seeking many lots and demand is not greatly in excess of supply. Such a scenario appears possible for this award.	
Original proposal: simple SMRA		SMRAs are potentially vulnerable to strategic demand reduction. Bidders may be tempted to reduce their demand in the auction with the objective of achieving a lower price per lot than would be possible if they bid strictly on the basis of their valuation. This may reduce the efficiency of the auction outcome.

CCA		Clock auctions may also be vulnerable to strategic demand reduction.
<b>Weak competition</b>		
Original proposal: simple SMRA		<p>SMRA formats may be vulnerable to weak competition, either as a result of bidder asymmetries (which discourage perceived weaker bidders from participating) or 'demand fixing' where bidders co-ordinate prior to the auction in an attempt to eliminate excess demand and thus achieve low prices.</p> <p>Measures to restrict transparency – such as hiding the number or names of applicants – may help to prevent coordination.</p>
CCA		<p>The CCA is also potentially vulnerable to demand fixing. As with the SMRA measures to restrict transparency may help to prevent coordination. Alternatively, the CCA could be terminated early (i.e. before demand is reduced to less than equal supply).</p>
<b>Unsold lots</b>	<p>Unsold lots are only a concern if they occur because bidders have been unable or unwilling to express the full value of their demand for different packages of lots, owing to spectrum packaging or auction design. If unsold lots occur purely as a result of lack of market demand this is an unavoidable outcome and does not affect the efficiency of the award.</p>	
Original proposal: simple SMRA		
CCA	<p>The CCA format largely eliminates the problem of inefficiently unsold lots through the use of the 'best and final offers' stage. This stage allows bidders to express their preferences for many different packages. The best and final offers are considered to see if there might be a more efficient allocation of the available spectrum in the event that there were unallocated lots at the end of the clock stage.</p>	

- 7.17 Ofcom believes that the simple SMRA and CCA should both perform well where lots are substitutes and competition is reasonably strong. However, the CCA has particular strengths compared with a simple SMRA, notably in handling the situation where lots within and across bands may be complementary. Given the changes to packaging made, Ofcom therefore believes that the CCA format is preferable to an SMRA.

## Competition issues

- 7.18 In the June consultation Ofcom considered whether the auction of the spectrum could negatively impact on competition in downstream markets if control of all or a significant proportion of the spectrum were to be gained by a limited number of bidders. In addition Ofcom also considered whether any competition problems would be caused if a successful bidder already held a position of strength in any markets such that it might have anti-competitive motives for acquiring the spectrum. If this were to be the case it could be appropriate to package the spectrum in such a way as to promote multiple entry and/or place restrictions on the amount of spectrum that any single bidder could acquire.
- 7.19 Ofcom commissioned research into the potential uses for the spectrum due to be auctioned. As noted in the consultation document, 10GHz spectrum would be of interest to broadcasters (for PMSE applications), mobile operators (for backhaul operations) and FWA operators (for backhaul operations and FWA service provision). 28 GHz and 32 GHz spectrum is likely to be of interest to mobile and FWA operators (for backhaul operations). Responses to the consultation document suggested that 40GHz spectrum might represent substitute spectrum for 32 GHz spectrum for some users.
- 7.20 Advisors to Ofcom, who undertook this research, suggested that potential competition concerns might arise, for example, if one or a small group of broadcasters purchased all the available 10 GHz spectrum and were able to exclude other PMSE users from access to the spectrum. Alternatively one or a small number of mobile operators purchased all the available 10 GHz, 28 GHz and 32 GHz spectrum, thereby excluding access by other operators.
- 7.21 The extent to which there are close substitutes for the spectrum being auctioned will determine the extent to which Ofcom has concerns about the possible impact on competition in downstream markets. There may be substitutable spectrum which can be used to develop the same products or there may be substitutable services in downstream markets.
- 7.22 For example Ofcom does not believe that there are any particular competition concerns with respect to FWA operators excluding access to other FWA operators since FWA operators face considerable competition from wired alternatives (e.g. cable and DSL services). In addition a number of alternative spectrum bands may be used for FWA applications, not least three of the bands on offer in this auction (10 GHz, 28 GHz and 32 GHz). Similarly these bands and others are potentially substitutable for mobile operators wishing to use the spectrum for backhaul operations.
- 7.23 There are a number of spectrum bands which could be used for PMSE services and spectrum in some bands may become accessible to PMSE operators in the future, which would undermine any market power exercised by a large broadcaster which purchased all of the available 10 GHz spectrum.

- 7.24 If a single bidder were to acquire all available spectrum for a particular use this could have potential to cause competition concerns, through the possibility that such a bidder could utilise its position to create a barrier to entry by excluding competitors access to a key input. As noted in the consultation document, Ofcom does not believe that there is a high risk of downstream competition concerns arising from the proposed auction, given the substitutes available for the spectrum and the possibility of further substitutable spectrum being released. In addition, Ofcom has not identified potential bidders who might have anti-competitive motives for acquiring the spectrum in order to foreclose particular downstream markets. In addition competition law or specific regulatory remedies are available to address such issues if they arise.

### **Costs to Ofcom**

- 7.25 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 and the award process is very unlikely to have a negative financial impact.

### **Business sectors affected**

- 7.26 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.27 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

### **Conclusion**

- 7.28 On the basis of the available evidence, Ofcom believes that a combinatorial clock auction is likely to secure the greatest benefit in terms of the efficient allocation of the spectrum and realisation of potential synergies in the context of efficient use of the spectrum. It also appears to be simpler and more practical to implement than the other options considered. One alternative in theory would be a simultaneous SMRA Award Process. However, Ofcom's research has shown that it appears difficult to find a practical way of designing a simultaneous SMRA Award Process which is capable of facilitating the realisation of synergies and which avoids strategic complexity for bidders.

## **Regulatory Impact Assessment – the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2007**

### **Proposal, purpose and intended effect**

- 7.29 The purpose of these draft regulations is to permit the transfer of all rights and obligations relating to wireless telegraphy licences 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**

- 7.30 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 the Band.

- 7.31 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**

- 7.32 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 Bands within the framework should require little additional cost.

### **Business sectors affected**

- 7.33 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.34 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

### **Conclusion**

- 7.35 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 2007**

### **Proposal, purpose and intended effect**

- 7.36 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.
- 7.37 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**

- 7.38 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.

- 7.39 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 Spectrum Band. 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.
- 7.40 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**

- 7.41 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.42 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

### **Conclusions**

- 7.43 Ofcom's assessment is that the benefits of including the Spectrum Band 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 Concurrent Spectrum Access Licences) (No.2) Order 2007**

### **Proposal, purpose and intended effect**

- 7.44 Following the June Consultation and Statement on the award of available the spectrum Ofcom has decided to award licences by means of an auction.
- 7.45 The draft Limitation Order to which this RIA relates is intended to allow Ofcom to limit the number of users of 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.
- 7.46 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 2007.

### **Costs and benefits to business**

- 7.47 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Band are lower than the costs of making use of the spectrum licence exempt.
- 7.48 The decision to license the Band, 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 Band 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**

- 7.49 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.
- 7.50 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.
- 7.51 Ofcom also notes that the administrative costs of holding the auction are likely to be small in relation to the benefit generated for the economy.

### **Business sectors affected**

- 7.52 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.53 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

### **Conclusion**

- 7.54 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

# 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 17 September 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/244504/>, 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 [robert.emson@ofcom.org.uk](mailto:robert.emson@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Robert Emson  
3<sup>rd</sup> 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 questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

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

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://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](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](mailto: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](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

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

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

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

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

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the 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. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://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/](http://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

# Consultation question

*Do stakeholders agree with the proposed statutory instruments set out in this notice for the award of this spectrum?*

## **Annex 5**

# **Draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007**

**2007 No.**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) (No. 2) Regulations  
2007**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

**CONTENTS**

**PART 1**

**INTRODUCTORY**

1. Citation, commencement and extent
2. Interpretation

**PART 2**

**APPLICATION STAGE**

3. Applications for the grant of a licence
4. Application

**PART 3**

**QUALIFICATION STAGE**

5. Assessment of bidder groups
6. Subsequent changes to bidder groups
7. Determination of applicants which are qualified to bid
8. Publication of determination
9. Withdrawal of an application
10. Determination of number of bidders

**PART 4**

**PROCEDURE WHERE THERE IS ONLY ONE BIDDER**

11. Paired frequency range selection menu
12. Grant of licence
13. Completion of the award process

## **DRAFT FOR CONSULTATION**

### **PART 5**

#### **PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER**

##### **CHAPTER 1**

###### **Principal stage and assignment stage**

14. Principal stage and assignment stage

##### **CHAPTER 2**

###### **Structure of principal stage**

15. Rounds and minimum participation requirement
16. Number of primary bid rounds
17. Determination of round prices
18. Eligibility points
19. Additional deposit before first primary bid round
20. Determination of bidder's eligibility points
21. Valid primary bids
22. Valid supplementary bids
23. Restrictions on amount of supplementary bid

##### **CHAPTER 3**

###### **Procedure for primary bid rounds**

24. Notice to be given to bidders before primary bid rounds
25. Procedure for making primary bids
26. Submission of primary bids to OFCOM
27. Alternative method for submission of primary bid
28. Extension to primary bid round
29. Incomplete or defective primary bid form
31. Release of information on primary bids in principal stage
32. Additional deposit for primary bid rounds

##### **CHAPTER 4**

###### **Procedure for supplementary bids round and final principal stage deposit**

33. Notice to be given to bidders before supplementary bids round
34. Procedure for making supplementary bids
35. Submission of supplementary bids to OFCOM
36. Alternative method for submission of supplementary bid
37. Extension to supplementary bids round
38. Incomplete or defective supplementary bids form
39. Notification that supplementary bid not valid
40. Final principal stage deposit

##### **CHAPTER 5**

###### **Determination of winning principal stage bids and conclusion of principal stage**

41. Determination of the winning principal stage bids and the winning combination of principal stage bids
42. Determination of base price of winning principal stage bids
43. Notification of results of principal stage and refund of deposits

## **DRAFT FOR CONSULTATION**

### **CHAPTER 6**

Assignment of paired frequency ranges to winning bidders for a band where one winning principal stage bid includes lots in the band

- 44. Procedure where winning principal stage bid includes all lots in a band
- 45. Procedure where winning principal stage bid does not include all lots in a band

### **CHAPTER 7**

Assignment of paired frequency ranges to winning bidders for a band where more than one winning principal stage bid includes lots in the band

- 46. Assignment stage round and assignment stage bid
- 47. Determination of paired frequency ranges
- 48. Assignment stage bid deposit
- 49. Valid assignment stage bids
- 50. Procedure where no valid assignment stage bid
- 51. Notice to bidders before the assignment stage round
- 52. Procedure for making assignment stage bids
- 53. Submission of assignment stage bids to OFCOM
- 54. Alternative method for submission of assignment stage bids
- 55. Extension to assignment stage round
- 56. Incomplete or defective assignment stage bid form
- 57. Determination of the winning assignment stage bids and the winning combination of assignment stage bids
- 58. Determination of the additional price
- 59. Notification of results of assignment stage

### **CHAPTER 8**

Grant stage

- 60. Determination of the licence fee
- 61. Procedure where amount of bidder's deposit is less than the licence fee
- 62. Procedure where amount of bidder's deposit is greater than or equal to the licence fee
- 63. Completion of the award process

## **PART 6 ACTIVITY RULES**

- 64. Forfeit of deposit and exclusion from award process
- 65. Bids made by an excluded bidder
- 66. Events

## **PART 7 MISCELLANEOUS**

- 67. General power of exclusion
- 68. Notification to OFCOM
- 69. Changes to timing or location
- 70. Changes to round times and use of electronic auction system
- 71. Rerunning rounds
- 72. Refunds

## DRAFT FOR CONSULTATION

- SCHEDULE 1 — MEANING OF BAND, SUB-BAND, LOT AND PAIRED FREQUENCY RANGE
- SCHEDULE 2 — APPLICATION INFORMATION
- SCHEDULE 3 — APPLICATION DOCUMENT
- SCHEDULE 4 — DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER GROUP WHO IS NOT AN ASSOCIATE
- SCHEDULE 5 — PAIRED FREQUENCY RANGE SELECTION MENU WHERE THERE IS ONLY ONE BIDDER
- SCHEDULE 6 — ROUND PRICE IN THE FIRST PRIMARY BID ROUND
- SCHEDULE 7 — ELIGIBILITY POINTS ATTRIBUTED TO LOTS
- SCHEDULE 8 — DETERMINATION OF BASE PRICE
- SCHEDULE 9 — DETERMINATION OF ADDITIONAL PRICE

The Office of Communications ("OFCOM") make the following Regulations in exercise of the powers conferred on OFCOM by section 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 2007 and shall come into force on **[date of coming into force]**.

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

#### Interpretation

**2.—**(1) In these Regulations—

"the additional price" has the meaning given in regulation 58;

"applicant" means a person making an application for a licence;

"the assignment stage" has the meaning given in regulation 14(1);

"assignment stage bid" has the meaning given in regulation 46(2);

"assignment stage bid form" has the meaning given in regulation 52;

"assignment stage round" has the meaning given in regulation 46(1);

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

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

---

(a) 2006 c.36.

## DRAFT FOR CONSULTATION

“the available total” has the meaning given in regulation 16(1);

“the base price” has the meaning given in regulation 42;

“the bid total” 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 4;

“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 provided to bidders by OFCOM for participating in the award process;

“eligibility points” has the meaning given in regulation 18(1);

“end of round time” has the meaning given in regulation 26(2);

“extension period” has the meaning given in regulation 28(1);

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

“the 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 stations for wireless telegraphy or install or use apparatus for wireless telegraphy in the United Kingdom at frequencies to be determined in accordance with the procedure set out in Part 4 or Part 5 of these Regulations;

“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;

---

(a) 2006 c.45.

## **DRAFT FOR CONSULTATION**

“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;

“paired frequency range selection form” has the meaning given in regulation 45(2);

“paired frequency range selection menu” shall be construed in accordance with regulation 11(1);

“pounds” means pounds sterling;

“primary bid” has the meaning given in regulation 15(2);

“primary bid form” has the meaning given in regulation 25;

“primary bid rounds” has the meaning given in regulation 15(1);

“the principal stage” has the meaning given in regulation 14(1);

“principal stage bid” means a primary bid or a supplementary bid;

“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 price” means the price per lot determined in accordance with regulation 17 at which lots in a particular band are offered to bidders during a primary bid round;

“a selection of lots” has the meaning given in regulation 14(2);

“supplementary bid” has the meaning given in regulation 15(4);

“supplementary bids form” has the meaning given in regulation 34;

“supplementary bids round” has the meaning given in regulation 15(1);

“valid primary bid” has the meaning given in regulation 21(1);

“valid principal stage bid” means a valid primary bid or a valid supplementary bid;

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

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

“winning principal stage bid” shall be construed in accordance with regulation 41; and

“winning bidder” means a bidder who submitted a winning principal stage bid.

(2) A reference in these Regulations to a “band”, “sub-band”, “lot” or “paired frequency range” shall be construed in accordance with Schedule 1.

## **PART 2**

### **APPLICATION STAGE**

#### **Applications for the grant of a licence**

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

#### **Application**

**4.**—(1) Only a body corporate may apply to OFCOM for a licence.

(2) A body corporate may only make one application.

(3) To apply for a licence, a body corporate must—



## **DRAFT FOR CONSULTATION**

- (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 Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (ii) a document, in the form set out in Schedule 3, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (iii) 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 4 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 twenty five thousand pounds.
- (4) OFCOM shall publish the day, times and deadline mentioned in paragraph (3) 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 under paragraph (1), 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), (ii) and (iii) 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 in the notice under paragraph (1).

(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

## **DRAFT FOR CONSULTATION**

- (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i), (ii) and (iii) 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 may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group, and the applicant shall be subject to regulations 7(2) and 64 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, the applicant must notify OFCOM forthwith of the change and submit versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant to its bidder group, the applicant must deliver to OFCOM a document in the form set out in Schedule 4 completed by the applicant 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 a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a licence having regard to the probity of —
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) any director of any 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 otherwise than to OFCOM or—
  - (i) to a member of the applicant's bidder group;
  - (ii) to a provider of finance for the purpose of raising finance for the applicant's application; or
  - (iii) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;

## **DRAFT FOR CONSULTATION**

- (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 who is so qualified and shall publish the names of all applicants who 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 and shall publish the last day for withdrawal on OFCOM's internet website ("the last day for withdrawal").

(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) Once an applicant withdraws its application, that applicant shall not be re-admitted to the award process.

### **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 already been forfeited under regulation 64) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant a 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 licences 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 licences in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

## DRAFT FOR CONSULTATION

### PART 4

#### PROCEDURE WHERE THERE IS ONLY ONE BIDDER

##### Paired frequency range selection menu

- 11.**—(1) Where there is only one bidder, OFCOM shall notify that bidder of—
- (a) a deadline by when the bidder must deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA a paired frequency range selection menu in the form set out in Schedule 5 completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
  - (b) a further deadline by when the bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).
- (2) The bidder must ensure that its selection of paired frequency ranges satisfies the following conditions—
- (a) the selection includes at least one paired frequency range;
  - (b) the selection includes no more than one paired frequency range in each band.
- (3) The licence fee shall be the total amount of the prices indicated on the paired frequency range selection menu for the paired frequency ranges selected by the bidder.
- (4) The sum which the bidder must pay to OFCOM shall be—
- (a) where the initial deposit has not been forfeited in accordance with regulation 64, a sum equal to the licence fee less the initial deposit;
  - (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.
- (5) Where, due to the manner of completion, the completed paired frequency range selection menu is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, 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 selection.
- (6) 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 menu in its entirety shall be accepted by OFCOM on that basis.
- (7) 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—
- (a) where the incompleteness or defect relates to one or more of the selections of paired frequency ranges made on the paired frequency range selection menu, that selection or those selections (as the case may be) shall be rejected by OFCOM and accordingly the bidder shall not be entitled to the grant of a licence for those selected paired frequency ranges;
  - (b) where sub-paragraph (a) does not apply, the paired frequency range selection menu in its entirety shall be rejected by OFCOM and accordingly the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 64) be forfeited.
- (8) Where the bidder does not—
- (a) deliver a completed paired frequency range selection menu to OFCOM in accordance with paragraph (1)(a); or
  - (b) pay OFCOM the required sum in accordance with paragraph (1)(b),
- the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 64) be forfeited.

## **DRAFT FOR CONSULTATION**

### **Grant of licence**

12. Where OFCOM have received from the bidder a completed paired frequency range selection menu in accordance with regulation 11(1)(a) and the required sum in accordance with regulation 11(1)(b), OFCOM shall grant the bidder a licence for the paired frequency ranges selected on the paired frequency range selection menu.

### **Completion of the award process**

- 13.—(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 a licence has been granted, the details of the paired frequency ranges in respect of which the licence was granted and the licence fee paid; and
  - (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not already been forfeited under regulation 64) but not any interest which has accrued on the deposits.

## **PART 5**

### **PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER**

#### **CHAPTER 1**

##### **Principal stage and assignment stage**

### **Principal stage and assignment stage**

14.—(1) Where there is more than one bidder, the process for the award of licences shall consist of the procedure set out in Chapters 2 to 5 of this Part (“the principal stage”) and the procedure set out in Chapters 6 and 7 of this Part (“the assignment stage”).

(2) A bid made during the principal stage shall be a bid for a number of lots in one or more bands (“a selection of lots”).

(3) The number of lots available in each band is the number set out in sub-paragraphs (a) to (g)—

- (a) ten lots in the national 10 GHz band;
- (b) two lots in the national 28 GHz band;
- (c) one lot in the first sub-national 28 GHz band;
- (d) one lot in the second sub-national 28 GHz band;
- (e) one lot in the third sub-national 28 GHz band;
- (f) six lots in the national 32 GHz band;
- (g) six lots in the national 40 GHz band.

(4) OFCOM shall assign paired frequency ranges that correspond to the selections of lots comprised in winning principal stage bids in accordance with the assignment stage.

(5) Licences for the paired frequency ranges so assigned shall be granted in accordance with the procedure set out in Chapter 8 of this Part.

## **DRAFT FOR CONSULTATION**

### **CHAPTER 2**

#### **Structure of principal stage**

##### **Rounds and minimum participation requirement**

**15.**—(1) During the principal stage there shall be one or more rounds for the submission of primary bids (“primary bid rounds”) and a further round for the submission of supplementary bids (“supplementary bids round”).

(2) A bid made during a primary bid round (“primary bid”) shall be a bid for a selection of lots at an amount in whole pounds which shall be the total amount of the round prices in that primary bid round for the lots selected.

(3) A bidder shall submit no more than one primary bid in a primary bid round.

(4) A bid made during the supplementary bids round (“supplementary bid”) shall be a bid for a selection of lots at an amount in whole pounds which shall be determined by the bidder (subject to the requirements set out in regulation 23).

(5) A bidder shall submit no more than one supplementary bid for each different selection of lots.

(6) The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in a primary bid made by the bidder, but a bidder shall submit no more than two hundred supplementary bids for selections of lots which are different from the selections of lots that were comprised in primary round bids made by the bidder.

(7) The minimum participation requirement is that a bidder must submit a valid primary bid in the first primary bid round.

(8) Any bidder which does not meet the minimum participation requirement shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 19, which shall (where not already forfeited under regulation 64) be forfeited.

##### **Number of primary bid rounds**

**16.**—(1) After each primary bid round, OFCOM shall determine in respect of each band whether the total number of lots in that band specified in the valid primary bids submitted during that round (“the bid total”) is greater than the number of lots available in that band as set out in regulation 14(3) (“the available total”).

(2) Where for each band the bid total is not greater than the available total—

- (a) there shall be no further primary bid rounds; and
- (b) there shall be a supplementary bids round.

(3) Where for at least one band the bid total is greater than the available total, there shall be another primary bid round unless OFCOM determine, in accordance with paragraph (4), that there shall be no further primary bid rounds.

(4) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be made available to bidders under regulation 31 following any such further primary bid rounds would affect decisions that bidders may make in relation to the supplementary bids round.

(5) Where OFCOM have made a determination under paragraph (3), there shall be a supplementary bids round.

##### **Determination of round prices**

**17.**—(1) In the first primary bid round, the round price for a band shall be the amount set out in Schedule 6.

## **DRAFT FOR CONSULTATION**

(2) In subsequent primary bid rounds, the round price for a band shall be determined by OFCOM in accordance with paragraph (3) or (5) (as the case may be).

(3) Where after the previous primary bid round OFCOM have determined under regulation 16 that the bid total for a band was greater than the available total for the band, the round price for the band shall be an amount that is higher than the amount that was the round price for the band in the previous primary bid round, subject to the limit in paragraph (4).

(4) Where paragraph (3) applies, the amount of the round price for the band shall not be more than twice the amount of the round price for that band in the previous primary bid round.

(5) Where after the previous primary bid round OFCOM have determined under regulation 16 that the bid total for the band was not greater than the available total for the band, the round price for the band shall be the same amount as it was in the previous primary bid round.

### **Eligibility points**

**18.**—(1) For each primary bid round a number of points (“eligibility points”) shall be attributed to each bidder in accordance with regulation 20.

(2) A number of eligibility points shall also be attributed to each lot selected in a primary bid in accordance with Schedule 7.

(3) Where a bidder makes a primary bid in a primary bid round, the total number of eligibility points attributed to the selection of lots comprised in the primary bid shall not be greater than the number of eligibility points attributed to the bidder for that primary bid round.

### **Additional deposit before first primary bid round**

**19.**—(1) In addition to the initial deposit paid in accordance with regulation 4(3)(b), a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 20(1) for the purpose of calculating the number of eligibility points attributed to the bidder for the first primary bid round.

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

### **Determination of bidder’s eligibility points**

**20.**—(1) For the first primary bid round the number of eligibility points attributed to a bidder shall be a number equal to the total amount the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 19, but not including any sum forfeited under regulation 64) divided by ten thousand.

(2) Where the number of eligibility points attributed to a bidder in accordance with paragraph (1) is not a whole number, the number of eligibility points shall be that number rounded down to the nearest whole number.

(3) Where the number of eligibility points attributed to a bidder in accordance with paragraph (1) is greater than forty-two, the number of eligibility points shall be forty-two.

(4) For subsequent primary bid rounds the number of eligibility points attributed to a bidder shall be determined under paragraph (5) or (6) (as the case may be).

(5) Where a bidder makes a valid primary bid in a primary bid round, the total number of eligibility points attributed to the selection of lots comprised in the primary bid in accordance with regulation 18(2) shall be the number of eligibility points attributed to the bidder for the subsequent primary bid round.

(6) Where a bidder does not make a valid primary bid in a primary bid round, the number of eligibility points attributed to the bidder for the subsequent primary bid round shall be zero.

## **DRAFT FOR CONSULTATION**

### **Valid primary bids**

**21.**—(1) A primary bid shall only be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 16;
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42;

if it is a primary bid which satisfies the conditions set out in paragraph (2) (“valid primary bid”).

(2) The conditions are that—

- (a) the primary bid is submitted in accordance with the restriction set out in regulation 15(3);
- (b) the primary bid is made on a primary bid form that has been completed in accordance with regulation 25;
- (c) the completed primary bid form is submitted to OFCOM in accordance with regulation 26(1) and is received by OFCOM in accordance with regulation 26(2);
- (d) in respect of each band, the number of lots in the band selected by a bidder under regulation 25(a) is not greater than the available total for that band;
- (e) where the selection of lots comprised in the primary bid includes lots in the national 10 GHz band, it includes at least two such lots; and
- (f) the primary bid complies with the restriction set out in regulation 18(3).

### **Valid supplementary bids**

**22.**—(1) A supplementary bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42;

if it is a supplementary bid which satisfies the conditions set out in paragraph (2) (“valid supplementary bid”).

(2) The conditions in respect of a supplementary bid are that—

- (a) the supplementary bid is submitted in accordance with the restrictions set out in regulations 15(5) and (6);
- (b) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 34;
- (c) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2);
- (d) in respect of each band, the number of lots in a band selected by a bidder under regulation 34(a) is not greater than the available total for that band;
- (e) where the selection of lots comprised in the supplementary bid includes lots in the national 10 GHz band, it includes at least two such lots; and
- (f) the amount of the supplementary bid specified by the bidder under regulation 34(b) satisfies each of the requirements set out in regulation 23.

### **Restrictions on amount of supplementary bid**

**23.** The requirements referred to in regulation 22(2)(f) are that—

- (a) the amount of the supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the selection of lots comprised in the supplementary bid;
- (b) where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary round bid, the amount of the supplementary bid must be greater than the amount of the highest primary round bid made by the bidder for that selection of lots;



## **DRAFT FOR CONSULTATION**

- (c) where—
- (i) the bidder did not make a valid primary bid in the final primary bid round; or
  - (ii) the total number of eligibility points attributed to the selection of lots comprised in the supplementary bid is greater than the total number of eligibility points attributed to the selection of lots comprised in a valid primary bid made by the bidder in the final primary bid round,
- the amount of the supplementary bid must not be greater than the amount determined in accordance with sub-paragraph (d);
- (d) the amount referred to in sub-paragraph (c) is the total amount of the round prices for the selection of lots comprised in the supplementary bid in the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the condition set out in regulation 18(3).

### **CHAPTER 3**

#### **Procedure for primary bid rounds**

##### **Notice to be given to bidders before primary bid rounds**

- 24.** Before the start of each primary bid round, OFCOM shall notify each bidder of—
- (a) the date on which, and the times on that date within which, bidders may make primary bids;
  - (b) in respect of each band, the round price for the band (determined in accordance with regulation 17);
  - (c) the eligibility points attributed to the bidder for that primary bid round (determined in accordance with regulation 20).

##### **Procedure for making primary bids**

- 25.** In order to make a primary bid a bidder must, on a form provided to the bidder by OFCOM (“primary bid form”)—
- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence at the round price for that band; and
  - (b) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices for the selected lots.

##### **Submission of primary bids to OFCOM**

- 26.**—(1) Except as provided for in regulation 27, the bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.
- (2) Except as provided for in regulation 28, the completed primary bid form must be received by OFCOM by the time notified to bidders under regulation 24(a) as being the end of the period within which primary bids may be made (“end of round time”).

##### **Alternative method for submission of primary bid**

- 27.**—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a primary 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 primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.
- (2) The bidder must submit the primary bid form, signed by two authorised persons of that bidder, 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.

## **DRAFT FOR CONSULTATION**

### **Extension to primary bid round**

**28.**—(1) Where in a primary bid round OFCOM do not receive a completed primary bid form from a bidder by the end of round time for that primary bid round, the bidder shall (subject to paragraph (4)) have a further period of time in which to submit its completed primary bid form (“extension period”).

(2) The extension period shall end thirty minutes after the end of round time for the primary bid round.

(3) The completed primary bid form must be received by OFCOM by the end of the extension period.

(4) A bidder shall have an extension period for no more than two primary bid rounds, except where the bidder is given an additional extension period in accordance with paragraph (5).

(5) Where, in respect of a primary bid round, the conditions set out in paragraph (6) are satisfied, a bidder shall have an additional extension period for a subsequent primary bid round.

(6) The conditions referred to in paragraph (5) are that—

- (a) the bidder submitted its primary bid form so that it was received by OFCOM—
  - (i) after the end of round time for that primary bid round; and
  - (ii) before the end of the extension period; and
- (b) OFCOM are satisfied that circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not, using reasonable endeavours, submit its primary bid form so that it was received by OFCOM by the end of round time for that primary bid round.

### **Incomplete or defective primary bid form**

**29.**—(1) Where, due to the manner of completion, a primary bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder’s intention in relation to the making of the primary 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 primary 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 primary 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 primary bid form in its entirety shall be rejected by OFCOM and the primary bid submitted on the primary bid form shall not be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 16;
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42.

### **Notification that primary bid not valid**

**30.** OFCOM shall notify a bidder which submits a primary bid that is not a valid primary bid and shall give the reasons why the bid is not a valid primary bid.

### **Release of information on primary bids in principal stage**

**31.** After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of the bid total for each band for that primary bid round.

## **DRAFT FOR CONSULTATION**

### **Additional deposit for primary bid rounds**

**32.**—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 25(b) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 19 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) OFCOM may, having regard to the desirability of securing an efficient outcome to the principal stage, 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, any sum paid as a deposit under regulation 19 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) is not less than the highest valid primary bid that the bidder made before OFCOM issued the notification 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 provisions set out in paragraph (3), OFCOM shall notify the bidder of that fact and for any primary bid rounds following notice being given under this paragraph the number of eligibility points attributed to the bidder shall be zero.

## **CHAPTER 4**

### **Procedure for supplementary bids round and final principal stage deposit**

#### **Notice to be given to bidders before supplementary bids round**

**33.** Before the start of the supplementary bids round, OFCOM shall notify each bidder of —

- (a) the date on which, and the times on that date within which, bidders may make supplementary bids;
- (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

#### **Procedure for making supplementary bids**

**34.** In order to make a supplementary bid a bidder shall, on a form provided to the bidder by OFCOM ("supplementary bids form")—

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to include in a licence;
- (b) specify an amount in whole pounds that it is willing to pay for the licence.

#### **Submission of supplementary bids to Ofcom**

**35.**—(1) Except as provided for in regulation 36, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 37, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 33(a) as being the end of the period within which supplementary bids may be made.

#### **Alternative method for submission of supplementary bid**

**36.**—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a supplementary bids 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 supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids form, signed by two authorised persons of that bidder, 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.

## **DRAFT FOR CONSULTATION**

### **Extension to supplementary bids round**

**37.**—(1) Where OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 33(a) as the end of the supplementary bids round and paragraph (2) applies, the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 33(a) as the end of the supplementary bids round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not, using reasonable endeavours, submit its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 33(a) as the end of the supplementary bids round.

### **Incomplete or defective supplementary bids form**

**38.**—(1) Where, due to the manner of completion, a supplementary bids form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the supplementary bid or bids, 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 supplementary bid or bids.

(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 supplementary bids 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—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids under regulation 41;
  - (ii) the base price payable by a winning bidder under regulation 42;
- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids under regulation 41;
  - (ii) the base price payable by a winning bidder under regulation 42.

### **Notification that supplementary bid not valid**

**39.** OFCOM shall notify a bidder which submits a supplementary bid that is not a valid supplementary bid of that fact and shall give the reasons why the bid is not a valid supplementary bid.

### **Final principal stage deposit**

**40.**—(1) By the deadline notified to bidders under regulation 33(b), each bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 19 or 32 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is not less than whichever is the greater of—

- (a) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 25(b);

## **DRAFT FOR CONSULTATION**

- (b) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 34(b).

(2) Where a bidder does not satisfy the provisions set out in paragraph (1), OFCOM shall notify the bidder and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 19, 32 or paragraph (1), which shall (where not already forfeited under regulation 64) be forfeited, and all of that bidder's primary bids and supplementary bids (if any) shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42.

### **CHAPTER 5**

#### **Determination of winning principal stage bids and conclusion of principal stage**

##### **Determination of the winning principal stage bids and the winning combination of principal stage bids**

**41.**—(1) The winning principal stage bids shall be those valid principal stage bids that comprise the winning combination of principal stage bids.

(2) Unless paragraph (4) applies, the winning combination of principal stage bids shall be the valid combination of principal stage bids having the highest total value of amounts bid.

(3) A valid combination of principal stage bids is any combination of valid principal stage bids within which—

- (a) there is at most one valid principal stage bid from any one bidder; and
- (b) in respect of each band, the bid total in that band for the bids included in the combination is not greater than the available total in that band.

(4) Where there is more than one valid combination of principal stage bids for which the total value is equal highest, the winning combination of principal stage bids shall be determined in accordance with the order of precedence set out in paragraph (5).

(5) The order of precedence shall be determined by —

- (a) the total number of eligibility points attributed to the selections of lots comprised in each such valid combination of principal stage bids in accordance with Schedule 7 such that valid combinations of principal stage bids to which a greater total number of eligibility points are attributed prevail over valid combinations of principal stage bids to which a lesser total number of eligibility points are attributed; and
- (b) where the same total of eligibility points is attributed to the selections of lots comprised in any two or more such valid combinations of principal stage bids, OFCOM shall employ a method of random selection from amongst those valid combinations of principal stage bids to determine the winning combination of principal stage bids.

##### **Determination of base price of winning principal stage bids**

**42.** In respect of each winning principal stage bid OFCOM shall determine an amount in accordance with Schedule 8 ("the base price") which shall be payable by the relevant winning bidder under regulation 60.

##### **Notification of results of principal stage and refund of deposits**

**43.** Following determination of the winning principal stage bids and the winning combination of principal stage bids under regulation 41 and the determination of the base price for each winning principal stage bid under regulation 42, OFCOM shall—

- (a) notify each winning bidder of—

## DRAFT FOR CONSULTATION

- (i) the number of lots in each band comprised in its winning principal stage bid;
  - (ii) the base price for that winning principal stage bid;
- (b) notify each bidder of—
  - (i) the names of the winning bidders;
  - (ii) in respect of each winning bidder, the number of lots in each band comprised in its winning principal stage bid; and
- (c) refund to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders the initial deposits and any sum paid as a deposit under regulation 19, 32 or 40 (where such deposits have not been forfeited under regulation 15(8), 40(2) or 64), but not any interest which has accrued on the deposits.

## CHAPTER 6

Assignment of paired frequency ranges to winning bidders for a band where one winning principal stage bid includes lots in the band

### **Procedure where winning principal stage bid includes all lots in a band**

**44.** For each band where lots in the band were selected in one winning principal stage bid and all of the available lots in the band were so selected, OFCOM shall assign to the bidder that submitted the winning principal stage bid the paired frequency range comprising all of the frequencies in that band.

### **Procedure where winning principal stage bid does not include all lots in a band**

**45.—(1)** For each band where lots in the band were selected in one winning principal stage bid and not all of the available lots in the band were so selected, OFCOM shall notify the bidder that submitted the winning principal stage bid of—

- (a) the paired frequency ranges in the band that the relevant bidder may select, being the paired frequency ranges which satisfy the following conditions—
  - (i) the bandwidth of the paired frequency range is the same as the total bandwidth of the lots in that band selected in the bidder's winning principal stage bid;
  - (ii) the frequencies in that band which are not included in that paired frequency range form one paired frequency range; and
- (b) a deadline by when its selection must be received by OFCOM.

(2) To select a paired frequency range in a band the bidder must, on a form provided to the bidder by OFCOM ("paired frequency range selection form"), select no more than one of the paired frequency ranges in that band which were notified to the bidder by OFCOM under paragraph (1).

(3) Except as provided for in paragraph (4), the bidder must submit the completed paired frequency range selection form to OFCOM by using the electronic auction system, and the form must be received by OFCOM by the deadline notified to the bidder under paragraph (1)(b).

(4) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a paired frequency range selection 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 paired frequency range selection form and any requirements relating to the authentication of communications made by means of the alternative method.

(5) Where OFCOM have notified the bidder under paragraph (4), the bidder must submit the paired frequency range selection form, signed by two authorised persons of that bidder, by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (4) relating to the authentication of communications.

## **DRAFT FOR CONSULTATION**

(6) Where, due to the manner of completion, a paired frequency range selection form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, 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 selection.

(7) 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 paired frequency range selection form in its entirety shall be accepted by OFCOM on that basis.

(8) 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 paired frequency range selection form in its entirety shall be rejected by OFCOM and OFCOM shall determine which paired frequency range to assign to the bidder.

### **CHAPTER 7**

Assignment of paired frequency ranges to winning bidders for a band where more than one winning principal stage bid includes lots in the band

#### **Assignment stage round and assignment stage bid**

**46.**—(1) Where for at least one band the lots in the band were selected in more than one winning principal stage bid, there shall be one further round of bidding ("assignment stage round").

(2) A bid made during the assignment stage round ("assignment stage bid") shall be a bid for a paired frequency range at an amount in whole pounds specified by the bidder.

(3) A bidder is not required to submit an assignment stage bid.

(4) Only a bidder that submitted a winning principal stage bid which satisfies the condition set out in paragraph (5) shall be able to make an assignment stage bid in the assignment stage round.

(5) The condition referred to in paragraph (4) is that the selection of lots comprised in the winning principal stage bid included one or more lots in one of the bands to which the assignment stage round relates.

(6) The paired frequency ranges for which a winning bidder may make an assignment stage bid shall be determined by OFCOM in accordance with regulation 47.

(7) A bidder must not submit more than one assignment stage bid for each of the paired frequency ranges so determined.

#### **Determination of paired frequency ranges**

**47.** For each band to which the assignment stage round relates, the paired frequency ranges that are available to a bidder in the assignment stage round shall be the paired frequency ranges which satisfy the following conditions—

- (a) the bandwidth of the paired frequency range is equal to the total bandwidth of the lots in the band that were included in the bidder's winning principal stage bid; and
- (b) the lower frequency limit of the lower block of frequencies is such that the following conditions could be satisfied—
  - (i) each bidder whose winning principal stage bid includes lots in the band is assigned a paired frequency range that, in respect to that bidder's winning principal stage bid, satisfies the condition set out in paragraph (a);
  - (ii) there is no overlap between the paired frequency ranges so assigned; and
  - (iii) any frequencies in the band which are not so assigned form one paired frequency range.

## DRAFT FOR CONSULTATION

### Assignment stage bid deposit

**48.**—(1) Each bidder that is able to make an assignment stage bid in accordance with regulation 46(4) must, by a deadline specified by OFCOM, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount on deposit (including the initial deposit, any sum paid as a deposit under regulation 19, 32 or 40 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is an amount that is not less than the amount calculated in accordance with the formula set out in paragraph (2).

(2) The formula is—

$$d = b + \sum a$$

where—

“*d*” means the total amount on deposit;

“*b*” means the amount of the base price of the bidder’s winning principal stage bid (determined in accordance with regulation 42);

“*a*” means, in respect of each band to which the assignment stage round relates, the amount of the highest assignment stage bid made by the bidder for a paired frequency range in that band.

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

- (a) all of the assignment stage bids submitted by the bidder in the assignment stage round shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—
  - (i) the winning combination of assignment stage bids under regulation 57;
  - (ii) the additional price payable by a winning bidder under regulation 58;
- (b) the bidder will be deemed to have made a valid assignment stage bid of zero for each paired frequency range notified to that bidder under regulation 51(a) for the purposes mentioned in sub-paragraph (a).

### Valid assignment stage bids

**49.**—(1) An assignment stage bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58;

if it is an assignment stage bid which satisfies the conditions set out in paragraph (2) (“valid assignment stage bid”).

(2) The conditions are—

- (a) the assignment stage bid is submitted in accordance with the restriction set out in regulation 46(7);
- (b) the assignment stage bid is made on an assignment stage bid form that has been completed in accordance with regulation 52;
- (c) the completed assignment stage bid form is submitted to OFCOM in accordance with regulation 53(1) and is received by OFCOM in accordance with regulation 53(2).

### Procedure where no valid assignment stage bid

**50.** In respect of each paired frequency range notified to a bidder under regulation 51(a), where the bidder does not make a valid assignment stage bid for that paired frequency range, the bidder shall be deemed to have made a valid assignment stage bid of zero for that paired frequency range for the purposes of determining—



## **DRAFT FOR CONSULTATION**

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58.

### **Notice to bidders before the assignment stage round**

**51.** OFCOM shall notify each bidder that is able to make an assignment stage bid in the assignment stage bid round in accordance with regulation 46(4) of—

- (a) the paired frequency ranges that are available to that bidder as determined in accordance with regulation 47;
- (b) the date on which, and the times on that date within which, bidders may make assignment stage bids.

### **Procedure for making assignment stage bids**

**52.** In order to make an assignment stage bid for a paired frequency range in a band, a bidder must, on a form provided to the bidder by OFCOM (“assignment stage bid form”), specify an amount in whole pounds that it is willing to pay for a licence which includes that paired frequency range in addition to the base price determined under regulation 42 for that bidder’s winning principal stage bid.

### **Submission of assignment stage bids to OFCOM**

**53.—**(1) Except as provided for in regulation 54, a bidder must submit the completed assignment stage bid form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 55, the completed assignment stage bid form must be received by OFCOM by the time notified to the bidder under regulation 51(b) as being the end of the period within which assignment stage bids may be made.

### **Alternative method for submission of assignment stage bids**

**54.—**(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit an assignment stage 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 assignment stage bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage bid form, signed by two authorised persons of that bidder, 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.

### **Extension to assignment stage round**

**55.—**(1) Where OFCOM have not received a completed assignment stage bid form from a bidder by the time notified to bidders under regulation 51(b) as the end of the assignment stage round and paragraph (2) applies, the time by which the bidder’s completed assignment stage bid form must be received by OFCOM shall be the time thirty minutes after the time notified to bidders under regulation 51(b) as the end of the assignment stage round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not, using reasonable endeavours, submit its assignment stage bid form so that it was received by OFCOM by the time notified to bidders under regulation 51(b) as the end of the assignment stage round,

## **DRAFT FOR CONSULTATION**

### **Incomplete or defective assignment stage bid form**

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

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the assignment stage 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—

- (a) where the incompleteness or defect relates to one or more of the assignment stage bids made on the assignment stage bid form, that assignment stage bid or those assignment stage bids (as the case may be) shall be deemed to be invalid, and regulation 50 shall apply accordingly;
- (b) in all other cases, the assignment stage bid form in its entirety shall be rejected by OFCOM and all of the assignment stage bids made on that assignment stage bids form shall be deemed to be invalid, and regulation 50 shall apply accordingly.

### **Determination of the winning assignment stage bids and the winning combination of assignment stage bids**

**57.**—(1) For each band to which the assignment stage round relates, there shall be a separate determination of the winning assignment stage bids for paired frequency ranges in that band in accordance with paragraphs (2) to (5).

(2) For each band, the winning assignment stage bids for paired frequency ranges in the band shall be those valid assignment stage bids for paired frequency ranges in that band that comprise the winning combination of assignment stage bids.

(3) Unless paragraph (5) applies, the winning combination of assignment stage bids shall be the valid combination of assignment stage bids having the highest total value of amounts bid.

(4) A valid combination of assignment stage bids is any combination of valid assignment stage bids for paired frequency ranges in that band within which—

- (a) there is one valid assignment stage bid from each winning bidder whose winning principal stage bid included lots in the band;
- (b) there is no overlap between the paired frequency ranges comprised in those valid assignment stage bids; and
- (c) any frequencies in that band which are not included in those valid assignment stage bids form one paired frequency range.

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

### **Determination of the additional price**

**58.** In respect of each winning assignment stage bid OFCOM shall determine an amount in whole pounds in accordance with Schedule 9 ("the additional price") which shall be payable by the relevant winning bidder under regulation 60.

## DRAFT FOR CONSULTATION

### Notification of results of assignment stage

**59.** Following determination of the winning assignment stage bids and the winning combination of assignment stage bids under regulation 57, and the determination of the additional price for each winning assignment stage bid under regulation 58, OFCOM shall notify each winning bidder of—

- (a) the paired frequency ranges in respect of which the bidder made winning assignment stage bids;
- (b) the additional prices for the winning assignment stage bids made by the bidder.

## CHAPTER 8

### Grant stage

### Determination of the licence fee

**60.** The licence fee payable by a winning bidder shall be an amount equal to the total of—

- (a) the base price determined by OFCOM under regulation 42; and
- (b) for each winning assignment stage bid made by that bidder, the additional price for that winning assignment stage bid determined by OFCOM under regulation 58.

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

**61.**—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 19, 32, 40 or 48, but not including any sum forfeited under regulation 64) is an amount that is less than the amount of the winning bidder's licence fee calculated in accordance with regulation 60—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b);
- (b) the bidder must by the deadline specified in sub-paragraph (a) pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the 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 60 and the amount of the bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 19, 32, 40 or 48, but not including any sum forfeited under regulation 64).

(3) When a bidder has satisfied the conditions set out in paragraph (1)(b), OFCOM shall grant the bidder a licence for—

- (a) the paired frequency range or ranges (as the case may be) assigned to the bidder under Chapter 6 of this Part; and
- (b) the paired frequency range or ranges (as the case may be) for which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part.

(4) Where a bidder does not satisfy the provisions set out in paragraph (1)(b), the bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 19, 32, 40 or 48, which shall (where not already forfeited under regulation 64) be forfeited.

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

**62.**—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 19, 32, 40 or 48, but not including any sum forfeited under regulation 64) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 60, OFCOM shall—

- (a) grant the winning bidder a licence for—

## **DRAFT FOR CONSULTATION**

- (i) the paired frequency range or ranges (as the case may be) assigned to the bidder under Chapter 6 of this Part;
- (ii) the paired frequency range or ranges (as the case may be) in respect of which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part;
- (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 19, 32, 40 or 48, but not including any sum forfeited under regulation 64) and the amount of the winning bidder's licence fee calculated in accordance with regulation 60.

### **Completion of the award process**

**63.** After the grant of licences and the payment of refunds to winning bidders, OFCOM shall complete the award process by publishing on their internet website details of all valid principal stage bids and all valid assignment stage bids made by each bidder, the names of the persons to whom licences were granted, the details of the paired frequency ranges in respect of which those licences were granted and the details of the licence fees paid.

## **PART 6**

### **ACTIVITY RULES**

#### **Forfeit of deposit and exclusion from award process**

**64.** 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 66 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 19, 32, 40 or 48 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.

#### **Bids made by an excluded bidder**

**65.—**(1) Where a bidder is excluded from the award process under regulation 64(b) during the principal stage, all of the primary bids and supplementary bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42.

(2) Where a bidder is excluded from the award process under regulation 64(b) during the assignment stage, all of the assignment stage bids submitted by the bidder (including any bids which the bidder is deemed to have submitted under regulation 50) shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58.

#### **Events**

**66.** The events referred to in regulation 64, in relation to an applicant or bidder, are—

## DRAFT FOR CONSULTATION

- (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 otherwise than to OFCOM or—
  - (i) to a member of that applicant's or bidder's bidder group;
  - (ii) to a provider of finance for the purpose of raising finance for a bid; or
  - (iii) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group is —
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group;
- (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

**67.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a 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 a licence.

#### Notification to OFCOM

**68.** 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 which are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM —

## **DRAFT FOR CONSULTATION**

- (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, SE1A 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**

**69.**—(1) Subject to regulations 70 and 71, 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**

**70.**—(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 auction and any requirements relating to the use of passwords and authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the auction for the purposes notified to them under paragraph (3).

### **Rerunning rounds**

**71.**—(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 of the auction (or, if there was no previous round, from the start of the first primary bid 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).

## **DRAFT FOR CONSULTATION**

(4) Where this paragraph applies, OFCOM shall determine whether it is necessary in order to secure a fair and efficient outcome to—

- (a) disregard the bids made in one or more rounds; and
- (b) 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 primary bid round.

(5) Where paragraph (4) applies, OFCOM shall take all reasonable steps to notify bidders of its determination under that paragraph.

### **Refunds**

**72.** 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.

[Signature]

[Date]

SCHEDULE 1

Regulation 2(2)

MEANING OF BAND, SUB-BAND, LOT AND PAIRED  
FREQUENCY RANGE

*Meaning of “band”, “sub-band”, “lot” and “paired frequency range”*

1.—(1) In these Regulations the terms “band”, “sub-band”, “lot” and “paired frequency range” shall be construed in accordance with the following table.

(2) In sub-paragraph 1—

- (a) “lot”, in relation to a band, means two blocks of frequencies within the band such that the conditions specified in relation to that band in the column of the table headed “Lot” are satisfied;
- (b) “paired frequency range”, in relation to a band, means two blocks of frequencies each specified by a lower frequency limit and an upper frequency limit such that the following conditions are satisfied—
  - (i) one block of frequencies is entirely within the lower sub-band of the band;
  - (ii) the other block of frequencies is entirely within the upper sub-band of the same band; and
  - (iii) the conditions specified in relation to that band in the column of the table headed “Paired frequency range”.



# DRAFT FOR CONSULTATION

<i>Band</i>			<i>Lot</i>			<i>Paired frequency range</i>
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies comprising the lot</i>	<i>Separation between (i) the lower frequency limit of one block of frequencies, and (ii) the lower frequency limit of the other block of frequencies</i>	
National 10 GHz band	The frequencies between 10.125 GHz and 10.225 GHz	The frequencies between 10.475 GHz and 10.575 GHz	National 10 GHz lot	10 MHz	350 MHz	<ul style="list-style-type: none"> <li>(a) The lower frequency limit of the lower block of frequencies is one of the following: 10.125 GHz, 10.135 GHz, 10.145 GHz, 10.155 GHz, 10.165 GHz, 10.175 GHz, 10.185 GHz, 10.195 GHz or 10.205 GHz;</li> <li>(b) the bandwidth of each block of frequencies is one of the following: 20, MHz, 30 MHz, 40 MHz, 50 MHz, 60 MHz, 70 MHz, 80 MHz, 90 MHz or 100 MHz; and</li> <li>(c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 350 MHz.</li> </ul>
National 28 GHz band	The frequencies between 27.8285 GHz and 28.0525 GHz	The frequencies between 28.8365 GHz and 29.0605 GHz	National 28 GHz lot	112 MHz	1008 MHz	<ul style="list-style-type: none"> <li>(a) The lower frequency limit of the lower block of frequencies is one of the following: 27.8285 GHz or 27.9405 GHz;</li> <li>(b) the bandwidth of each block of frequencies is one of the following: 112 MHz or 224 MHz; and</li> <li>(c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 1008 MHz.</li> </ul>

**DRAFT FOR CONSULTATION**

<i>Band</i>			<i>Lot</i>			<i>Paired frequency range</i>
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies comprising the lot</i>	<i>Separation between (i) the lower frequency limit of one block of frequencies, and (ii) the lower frequency limit of the other block of frequencies</i>	
First sub-national 28 GHz band	The frequencies between 28.0525 GHz and 28.1645 GHz	The frequencies between 29.0605 GHz and 29.1725 GHz	First sub-national 28 GHz lot	112 MHz	1008 MHz	(a) the lower block of frequencies is the frequencies between 28.0525 GHz and 28.1645 GHz; (b) the upper block of frequencies is the frequencies between 29.0605 GHz and 29.1725 GHz;
Second sub-national 28 GHz band	The frequencies between 28.1925 GHz and 28.3045 GHz	The frequencies between 29.2005 GHz and 29.3125 GHz	Second sub-national 28 GHz lot	112 MHz	1008 MHz	(a) the lower block of frequencies is the frequencies between 28.1925 GHz and 28.3045 GHz; (b) the upper block of frequencies is the frequencies between 29.2005 GHz and 29.3125 GHz;
Third sub-national 28 GHz band	The frequencies between 28.3325 GHz and 28.4445 GHz	The frequencies between 29.3405 GHz and 29.4525 GHz	Third sub-national 28 GHz lot	112 MHz	1008 MHz	(a) the lower block of frequencies is the frequencies between 28.3325 GHz and 28.4445 GHz; (b) the upper block of frequencies is the frequencies between 29.3405 GHz and 29.4525 GHz;

**DRAFT FOR CONSULTATION**

<i>Band</i>			<i>Lot</i>			<i>Paired frequency range</i>
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies comprising the lot</i>	<i>Separation between (i) the lower frequency limit of one block of frequencies, and (ii) the lower frequency limit of the other block of frequencies</i>	
National 32 GHz band	The frequencies between 31.815 GHz and 32.571 GHz	The frequencies between 32.627 GHz and 33.383 GHz	National 32 GHz lot	126 MHz	812 MHz	<ul style="list-style-type: none"> <li>(a) The lower frequency limit of the lower block of frequencies is one of the following: 31.815 GHz, 31.941 GHz, 32.067 GHz, 32.193 GHz, 32.319 GHz or 32.445 GHz;</li> <li>(b) the bandwidth of each block of frequencies is one of the following: 126 MHz, 252 MHz, 378 MHz, 504 MHz, 630 MHz or 756MHz; and</li> <li>(c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 812 MHz.</li> </ul>
National 40 GHz band	The frequencies between 40.50 GHz and 42.00 GHz	The frequencies between 42.00 GHz and 43.50 GHz	National 40 GHz lot	250 MHz	1.5 GHz	<ul style="list-style-type: none"> <li>(a) The lower frequency limit of the lower block of frequencies is one of the following: 40.50 GHz, 40.75 GHz, 41.00 GHz, 41.25 GHz, 41.50 GHz or 41.75 GHz;</li> <li>(b) the bandwidth of each block of frequencies is one of the following: 250 MHz, 500 MHz, 750 MHz, 1 GHz, 1.25 GHz, or 1.50 GHz; and</li> <li>(c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 1.5 GHz.</li> </ul>

## SCHEDULE 2

Regulation 4(3)(a)(i)

### APPLICATION INFORMATION

#### 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 to registered office)

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

Provide the name and job title of each of the directors or 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 2007 ("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 4 to the Regulations in accordance with regulation 4(3)(a)(iii) 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—

- (d) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (e) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (f) 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;
- (g) 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;

- (h) 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;
- (i) 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;
- (j) 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
- (k) 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—

- (l) agreements (if any) relating to the management of the applicant; and
- (m) 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.

## SCHEDULE 3

Regulation 4(3)(a)(ii)

### APPLICATION DOCUMENT

[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 2007 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 64 and 66 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

## SCHEDULE 4

Regulation 4(3)(a)(iii)

### 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 2007 ("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 64 and 66 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), 64 and 66 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]—

- (a) has ever been or becomes a member of any other applicant's or bidder's bidder group;
- (b) 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
- (c) 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—

- (a) consents to be a member of the applicant/bidder's bidder group;
- (b) is not a member of any other applicant's or bidder's bidder group; and
- (c) is aware of the provisions in regulations 64 and 66 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—

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

## SCHEDULE 5

Regulation 11(1)(a)

### PAIRED FREQUENCY RANGE SELECTION MENU WHERE THERE IS ONLY ONE BIDDER

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

E-mail address:

<i>Paired frequency range</i>	<i>Price of paired frequency range</i>	<i>Selection of paired frequency ranges (indicate selected paired frequency ranges with a cross ("X") against the paired frequency ranges listed, selecting no more than one paired frequency range from each band)</i>
<b>National 10 GHz band</b>		
1. 10.125–10.145 GHz paired with 10.475–10.495 GHz	£20,000	
2. 10.125–10.155 GHz paired with 10.475–1.505 GHz	£30,000	
3. 10.125–10.165 GHz paired with 10.475–10.515 GHz	£40,000	
4. 10.125–10.175 GHz paired with 10.475–10.525 GHz	£50,000	
5. 10.125–10.185 GHz paired with 10.475–10.535 GHz	£60,000	
6. 10.125–10.195 GHz paired with 10.475–10.545 GHz	£70,000	
7. 10.125–10.205 GHz paired with 10.475–10.555 GHz	£80,000	
8. 10.125–10.215 GHz paired with 10.475–10.565 GHz	£90,000	
9. 10.125–10.225 GHz paired with 10.475–10.575 GHz	£100,000	
10. 10.205–10.225 GHz paired with 10.555–10.575 GHz	£20,000	
11. 10.195–10.225 GHz paired with 10.545–10.575 GHz	£30,000	
12. 10.185–10.225 GHz paired with 10.535–10.575 GHz	£40,000	
13. 10.175–10.225 GHz paired with 10.525–10.575 GHz	£50,000	
14. 10.165–10.225 GHz paired with 10.515–10.575 GHz	£60,000	
15. 10.155–10.225 GHz paired with 10.505–10.575 GHz	£70,000	
16. 10.145–10.225 GHz paired with 10.495–10.575 GHz	£80,000	



17. 10.135–10.225 GHz paired with 10.485–10.575 GHz	£90,000
<b>National 28 GHz band</b>	
18. 27.8285–27.9405 GHz paired with 28.8365–28.9485 GHz	£60,000
19. 27.8285–28.0525 GHz paired with 28.8365–29.0605 GHz	£120,000
20. 27.9405–28.0525 GHz paired with 28.9485–29.0605 GHz	£60,000
<b>First sub-national 28 GHz band</b>	
21. 28.0525–28.1645 GHz paired with 29.0605–29.1725 GHz	£20,000
<b>Second sub-national 28 GHz band</b>	
22. 28.1925–28.3045 GHz paired with 29.2005–29.3125 GHz	£10,000
<b>Third sub-national 28 GHz band</b>	
23. 28.3325–28.4445 GHz paired with 29.3405–29.4525 GHz	£30,000
<b>National 32 GHz band</b>	
24. 31.815–31.941 GHz paired with 32.627–32.753 GHz	£60,000
25. 31.815–32.067 GHz paired with 32.627–32.879 GHz	£120,000
26. 31.815–32.193 GHz paired with 32.627–33.005 GHz	£180,000
27. 31.815–32.319 GHz paired with 32.627–33.131 GHz	£240,000
28. 31.815–32.445 GHz paired with 32.627–33.257 GHz	£300,000
29. 31.815–32.571 GHz paired with 32.627–33.383 GHz	£360,000
30. 32.445–32.571 GHz paired with 33.257–33.383 GHz	£60,000
31. 32.319–32.571 GHz paired with 33.131–33.383 GHz	£120,000
32. 32.193–32.571 GHz paired with 33.005–33.383 GHz	£180,000
33. 31.067–32.571 GHz paired with 32.879–33.383 GHz	£240,000
34. 31.941–32.571 GHz paired with 32.753–33.383 GHz	£300,000
<b>National 40 GHz band</b>	
35. 40.50–40.75 GHz paired with 42.00–42.25 GHz	£30,000
36. 40.50–41.00 GHz paired with 42.00–42.50 GHz	£60,000
37. 40.50–41.25 GHz paired with 42.00–42.75 GHz	£90,000
38. 40.50–41.50 GHz paired with 42.00–43.00 GHz	£120,000
39. 40.50–41.75 GHz paired with 42.00–43.25 GHz	£150,000
40. 40.50–42.00 GHz paired with 42.00–43.50 GHz	£180,000

41.	41.75–42.00 GHz paired with 43.25–43.50 GHz	£30,000
42.	41.50–42.00 GHz paired with 43.00–43.50 GHz	£60,000
43.	41.25–42.00 GHz paired with 42.75–43.50 GHz	£90,000
44.	41.00–42.00 GHz paired with 42.50–43.50 GHz	£120,000
45.	40.75–42.00 GHz paired with 42.25–43.50 GHz	£150,000

## SCHEDULE 6

Regulation 17(1)

### ROUND PRICE IN THE FIRST PRIMARY BID ROUND

In the first primary bid round the round price for a lot of a description mentioned in an entry in the column (1) is the price shown in the corresponding entry in column (2).

<i>Column (1)</i>	<i>Column (2)</i>
<i>Description of lot</i>	<i>Price in the first primary bid round</i>
National 10 GHz lot	£10,000
National 28 GHz lot	£60,000
First sub-national 28 GHz lot	£20,000
Second sub-national 28 GHz lot	£10,000
Third sub-national 28 GHz lot	£30,000
National 32 GHz lot	£60,000
National 40 GHz lot	£30,000

## SCHEDULE 7

Regulation 18(2)

### ELIGIBILITY POINTS ATTRIBUTED TO LOTS

The number of eligibility points attributed to a lot of a description mentioned in an entry in the column (1) is the number of points shown in the corresponding entry in column (2).

<i>Column (1)</i>	<i>Column (2)</i>
<i>Description of lot</i>	<i>Number of eligibility points</i>
National 10 GHz lot	1
National 28 GHz lot	6
First sub-national 28 GHz lot	2
Second sub-national 28 GHz lot	1
Third sub-national 28 GHz lot	3
National 32 GHz lot	6
National 40 GHz lot	3

## SCHEDULE 8

Regulation 42

### DETERMINATION OF BASE PRICE

#### *Base price*

1.—(1) OFCOM shall determine a base price for each winning principal stage bid by imposition of the requirements that the base prices must satisfy that are set out in paragraphs 2 to 5.

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

#### *First requirement*

2. The base price for each winning principal stage bid shall be—

- (a) no less than the total of the round prices in the first primary bid round for the selection of lots comprised in that winning principal stage bid; and
- (b) no greater than the amount of that winning principal stage bid.

#### *Second requirement*

3. Taking the base prices for the winning principal stage bids together, the base prices shall be such that if—

- (a) the amount bid by each winning bidder for the selection of lots comprised in its winning principal stage bid had been the base price rather than the amount of its winning principal stage bid (“reduced winning principal stage bid”); and
- (b) the amount bid by each winning bidder in respect of each other valid principal stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning principal stage bid and the base price for that winning principal stage bid;

the combination of the reduced winning principal stage bids submitted by the winning bidders would have been the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid.

#### *Third requirement*

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

#### *Fourth requirement*

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

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

$$OCV_B = \sum (p_B - c_B)^2$$

where—

“ $p_B$ ” means the price for a winning principal stage bid; and

“ $c_B$ ” means the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning principal stage bid.

(3) The formula is—

$$c_B = u_B - t_B + b_B$$

where—

“ $u_B$ ” means the amount calculated in accordance with sub-paragraph (4);

“ $t_B$ ” means the total amount of the winning principal stage bids; and

“ $b_B$ ” means the amount of the winning principal stage bid for which  $p_B$  is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid, where the principal stage bids to be included in the valid combination of principal stage bids do not include any of the principal stage bids made by the winning bidder that submitted the winning principal stage bid for which  $p_B$  is the price.

*Interpretation*

**6.** In this Schedule “valid combination of principal stage bids” shall be construed in accordance with regulation 41.

## DETERMINATION OF ADDITIONAL PRICE

*Additional price*

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

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

*First requirement*

2. The additional price for each winning assignment stage bid shall be no greater than amount of that winning assignment stage bid.

*Second requirement*

3. Taking the additional prices for the winning assignment stage bids for paired frequency ranges in the same band together, the additional prices for winning assignment stage bids for paired frequency ranges in each band shall be such that if—

- (a) the amount bid by each winning bidder for the paired frequency range selected in its winning assignment stage bid for a paired frequency range in that band had been the additional price rather than the amount of its winning assignment stage bid (“reduced winning assignment stage bid”); and
- (b) the amount bid by each winning bidder in respect of each other valid assignment stage bid made by that bidder for a paired frequency range in that band had been reduced by an amount equal to the difference between the amount of its winning assignment stage bid for a paired frequency range in that band and the additional price for that relevant winning assignment stage bid;

the combination of the reduced winning assignment stage bids submitted by the winning bidders would have been the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for paired frequency ranges in that band having the highest total value of amounts bid.

*Third requirement*

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

*Fourth requirement*

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

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

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

where—

“ $p_A$ ” means the price for a winning assignment stage bid; and

“ $c_A$ ” means the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning assignment stage bid.

(3) The formula is—

$$c_A = u_A - t_A + b_A$$

where—

“ $u_A$ ” means the amount calculated in accordance with sub-paragraph (4);

“ $t_A$ ” means the total amount of the winning assignment stage bids; and

“ $b_A$ ” means the amount of the winning assignment stage bid for which  $p_A$  is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for paired frequency ranges in the same band having the highest total value of amounts bid, where the assignment stage bids to be included in the valid combination of assignment stage bids do not include any of the assignment stage bids made by the winning bidder that submitted the winning assignment stage bid for which  $p_A$  is the price.

*Interpretation*

**6.** In this Schedule “valid combination of assignment stage bids” shall be construed in accordance with regulation 57.



## **Annex 6**

# **Draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2007**

2007 No.

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Spectrum Trading) (Amendment)  
(No. 2) Regulations 2007**

*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 2007 and shall come into force on **[date of coming into force]**.

**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 at the end of Column 2—

“10.125–10.225 GHz  
10.475–10.575 GHz  
27.8285–28.0525 GHz  
28.0525–28.1645 GHz  
28.1925–28.3045 GHz  
28.3325–28.4445 GHz  
28.8365–29.0605 GHz  
29.0605–29.1725 GHz

---

(a) 2006 c. 36.

(b) S.I. 2004/3154 as amended by S.I. 2006/339, S.I. 2006/1807 and S.I. 2007/380.

29.2005–29.3125 GHz

29.3405–29.4525 GHz

31.815–32.571 GHz

32.627–33.383 GHz

40.50–42.00 GHz

42.00–43.50 GHz”.

[Date]

[Signature]

## **Annex 7**

# **Draft Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2007**

2007 No.

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) (No. 2)  
Regulations 2007**

*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 2007 and shall come into force on **[date of coming into force]**.

**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 at the end of Column 2—

“10.125–10.225 GHz  
10.475–10.575 GHz  
27.8285–28.0525 GHz  
28.0525–28.1645 GHz  
28.1925–28.3045 GHz  
28.3325–28.4445 GHz  
28.8365–29.0605 GHz  
29.0605–29.1725 GHz

---

(a) 2006 c. 36.

(b) S.I. 2004/3155 as amended by S.I. 2006/340, S.I. 2006/1808 and S.I. 2007/381.

29.2005–29.3125 GHz

29.3405–29.4525 GHz

31.815–32.571 GHz

32.627–33.383 GHz

40.50–42.00 GHz

42.00–43.50 GHz”.

[Date]

[Signature]

## **Annex 8**

# **Draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Regulations 2007**

2007 No.

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Limitation of Number of Spectrum  
Access Licences) (No. 2) Order 2007**

*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 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, commencement and extent**

**1.**—(1) These Regulations may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2007 and shall come into force on **[date of coming into force]**.

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

**Limitation of licences**

**2.**—(1) OFCOM shall grant up to twenty-two wireless telegraphy licences for the use of the following frequency bands in the United Kingdom—

10.125–10.225 GHz;

10.475–10.575 GHz;

27.8285–28.0525 GHz;

28.0525–28.1645 GHz;

28.1925–28.3045 GHz;

28.3325–28.4445 GHz;

28.8365–29.0605 GHz;

---

(a) 2006 c. 36.



29.0605–29.1725 GHz;

29.2005–29.3125 GHz;

29.3405–29.4525 GHz;

31.815–32.571 GHz;

32.627–33.383 GHz;

40.50–42.00 GHz;

42.00–43.50 GHz.

(2) Subject to paragraph (1), in determining the number of licences to be granted for the use of these frequency bands and the persons to whom the licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007(a).

[Signature]

[Date]

---

(a) S.I. [number of S.I.].