



Notice of Ofcom's proposal to  
make regulations in connection  
with the award of 1785 – 1805  
MHz

**Consultation**

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## Section 1

# Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make four statutory instruments in connection with the award of a wireless telegraphy licence for use of the spectrum band 1785 to 1805 MHz ("the Spectrum Band") in Northern Ireland. 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 the licence to use the Spectrum Band in Northern Ireland (see the statement entitled Award of available spectrum: 1785 to 1805 MHz published on 14 December 2006). An information memorandum setting out relevant information which potential applicants for the licence should take into account has also been published.

**This notice is provided in compliance with section 403(4)(a) and (b) of the Communications Act 2003. It should be noted that the Wireless Telegraphy Act 2006 ("the 2006 Act")<sup>1</sup> will be in force when the statutory instruments will be made, and therefore the references in this document to the powers under which these statutory instruments will be made are expressed in terms of the 2006 Act.**

### Proposed Wireless Telegraphy (Licence Award) Regulations 2007

- 1.2 The Wireless Telegraphy (Licence Award) Regulations (the "NI Regulations") set out the process and rules for award of the licence to use the Spectrum Band in Northern Ireland (the "NI Licence"). 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 process for the award of the Licence (the "Award Process") will determine the identity of the licensee. The regulations include provisions describing the procedures and rules for applying and bidding for the NI Licence, how the winning bidder 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) Regulations 2007

- 1.3 Ofcom has decided that the NI Licence for the use of the Spectrum Band in Northern Ireland 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) Regulations 2007

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<sup>1</sup>The Wireless Telegraphy Act 2006 was passed by Parliament on 25 October 2006. It received Royal Assent on 8 November 2006 and will come into force in the United Kingdom on 8 February 2007. The new Act replaces the Wireless Telegraphy Acts 1949, 1967 and 1998, the Marine etc Broadcasting (Offences) Act 1967, Part 6 of the Telecommunications Act 1984 and certain provisions of the Communications Act 2003.

- 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 NI Licence to use the Spectrum Band 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) 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 it is here in the case of the Spectrum 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 19 January 2006.

## Section 2

# Notice

### Background to the proposals

- 2.1 Ofcom plans to award the NI Licence for the Spectrum Band.
- 2.2 On 14 December 2006, Ofcom published its decision to hold an award process in a statement entitled Award of available spectrum: 1785 to 1805 MHz (the "Statement"). The Statement followed extensive consultation with stakeholders on the approach allowing use of the Spectrum Band, in particular:
- consultation carried out by Ofcom in January 2005 (Spectrum Framework Review: Implementation Plan)
  - consultation carried out jointly by Ofcom and ComReg in December 2005 entitled Award of available spectrum: 1785 – 1805 MHz (the "December Consultation").

### Notice of proposals

- 2.3 This notice covers four related proposals to make regulations to allow the award of the NI Licence to use the Spectrum Band.

### Proposed auction regulations

- 2.4 Ofcom has the statutory power to make regulations to award a licence by means of an auction and it has decided to do this. Accordingly Ofcom proposes to make the NI Regulations in order to allow an auction to be held for the purpose of awarding the NI Licence to use the Spectrum Band. A draft of the proposed NI Regulations is set out at Annex 5.
- 2.5 The general effect of these regulations is set out at Section 3 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

### Proposed trading regulations

- 2.6 Ofcom has decided that the licence to be awarded for the Spectrum 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) Regulations 2007. A draft of the proposed regulations is set out at Annex 6.
- 2.7 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

### Proposed register regulations

- 2.8 Ofcom has decided that certain information relating to the NI Licence 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) Regulations 2007. A draft of the proposed regulations is set out at Annex 7.

- 2.9 The general effect of these regulations is set out at Section 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 will have on costs to business.

### **Proposed limitation order**

- 2.10 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to the Spectrum Band for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Spectrum Band. Accordingly Ofcom proposes to make The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007. A draft of the proposed order is set out at Annex 8.
- 2.11 The general effect of this order is set out at Section 5 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 will have on costs to business.

### **Comments or representations**

- 2.12 Comments or representations with respect to the four proposed regulations are invited by 19 January 2007. This consultation period is in excess of the minimum statutory requirement to reflect the changes made to Ofcom's proposals for the Spectrum Bands as a result of the December Consultation and responses. Comments should be sent to:

Cliff Mason

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

[cliff.mason@ofcom.org.uk](mailto:cliff.mason@ofcom.org.uk)

020 7783 4353

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

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

[cliff.mason@ofcom.org.uk](mailto:cliff.mason@ofcom.org.uk)

020 7783 4353

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



## Section 3

# General effect of the proposed Wireless Telegraphy (Licence Award) Regulations 2007

## The legislative framework

- 3.1 Under section 14(1), (2) (3), (4) and (7) of 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 Northern Ireland but will not extend to Great Britain (England, Wales and Scotland), 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 Process of the NI Licence for the Spectrum Band. The Award Process includes an application stage, a qualification stage and two procedures to follow for award of the NI Licences, depending on the number of bidders.

## 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 information 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 and any person in receipt of confidential information of the applicant in respect of the award process. 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 information 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 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 “Confidential information” is defined in the proposed NI 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 or bidder, would be likely to affect decisions that such other person may make in relation to the award process.
- 3.9 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 NI Regulations.

### Qualification stage

- 3.10 The qualification stage is described in detail at Part 3 of the proposed NI Regulations. Following receipt of the applications, Ofcom will notify all applicants of the names 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.
- 3.11 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.
- 3.12 Regulation 6 of the proposed NI Regulations provides that an applicant may make changes to the composition of their bidder groups 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 NI Regulations.
- 3.13 Following the period for resolution of overlaps, Ofcom will determine which applicants are qualified to bid in the Award Process. 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 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).
- 3.14 Ofcom may request that additional information be provided by a specified time in relation to an application. 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.
- 3.15 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 also publish the identity of all applicants who are qualified to bid in the auction on its website.
- 3.16 Ofcom will also notify each applicant qualified to bid of the last day on which they may withdraw from the Award Process.

- 3.17 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 but not any interest which has accrued (unless the deposit has been forfeited in accordance with the activity rules set out at Part 6 of the proposed regulations) at the end of the award process, but they may not be re-admitted to the Award Process.
- 3.18 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 determination of the procedure to be followed for the award of the NI Licence. A bidder is committed to purchase the NI Licence if it is the only bidder remaining and Ofcom proceeds under Part 4 of the proposed NI Regulations or to purchase the NI Licence if it submits a winning bid under the auction to be held under the Part 5 procedure.

### **Auction stage – only one bidder**

- 3.19 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.
- 3.20 Where there is only one bidder the licence fee will be £50,000 and Ofcom will send the bidder a notice stating the day by which it must transfer to Ofcom the balance of the licence fee.
- 3.21 The balance of the licence fee which the bidder must pay to Ofcom will be the licence fee less the initial deposit, unless the initial deposit has already been forfeited in which case the full licence fee is payable. Ofcom will grant the bidder the NI Licence once it has received the appropriate payment.
- 3.22 Following the grant of the NI Licence, Ofcom will complete the Award Process by publishing the identity of the licensee 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**

- 3.23 Part 5 of the proposed NI Regulations sets out the procedure to be followed where, following the last day for withdrawal, there is more than one bidder.
- 3.24 Ofcom will give a notice to each of the bidders setting out details of when the auction will take place. This notice will also reveal the identity of all other bidders and will include a password for each bidder, which will be required when completing the bidding document. Ofcom will also publish the identity of all bidders and the date for submission of bids on its website.
- 3.25 To bid in the Award Process, bidders in receipt of the notice must submit a bidding document in the form provided for in the proposed regulations, signed by two authorised persons and accompanied by the appropriate password, together with a bidder document in the form provided for in the proposed regulations, signed by two authorised persons.

- 3.26 The bidder document requires the bidder to confirm that all statements made in its application and any documents submitted to Ofcom as part of the Award Process are and remain true, that it has complied with the requirements of the proposed NI Regulations and that it has notified Ofcom in accordance with the proposed NI Regulations in respect of any changes to its bidder group subsequent to its application.
- 3.27 Regulation 17 of the proposed NI Regulations explains that the completed bid documentation must then be submitted to Ofcom in a sealed, non-transparent envelope within the times and on the day specified by Ofcom either to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA or Landmark House, The Gasworks, Ormeau Road, Belfast BT7 2JD and placed in the box marked for delivery of the sealed bids. Bidders must also ensure that a further deposit is paid to Ofcom at the same time.
- 3.28 Where the bidder has forfeited its initial deposit, this further deposit will be an amount equal to the sum which the bidder has specified. Where the bidder has not forfeited its initial deposit, this further deposit will be the difference between the initial deposit and the sum which that bidder has specified for the NI Licence. As with the initial deposit, this further deposit will not earn interest and will only be refunded in the circumstances set out in the proposed regulations. The total sum on deposit after payment of this further deposit is known as the bid deposit.
- 3.29 Ofcom will open only those sealed bids which were delivered to Ofcom in accordance with the procedure set out in the proposed NI Regulations. Sealed bids not submitted in accordance with the procedure will be rejected and excluded from the award process. Ofcom will notify any bidder whose bid has been rejected of the rejection and the reasons for it. Ofcom will also notify any bidder in respect of whom no sealed bid was opened.
- 3.30 Where any sealed bids are incomplete or defective, but Ofcom can unambiguously identify the identity and intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms Ofcom's understanding, the sealed bid will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm Ofcom's understanding, the sealed bid will be rejected.
- 3.31 Ofcom shall then determine from those bids which have not been rejected ("valid bids"), the winning bid.
- 3.32 The winning bid will be the valid bid with the highest value.
- 3.33 If there is a tie (i.e. two equal valid bids with the highest value), Ofcom will use a method of random selection amongst the tied bids to determine the winning bid.
- 3.34 The licence fee to be paid by the winning bidder will be the amount of the highest valid bid that was not the winning bid or £50,000, whichever is the higher.
- 3.35 After determining the winning bid and the identity of the winning bidder, Ofcom will grant the winning bidder the NI Licence and refund to the winning bidder the difference between its bid deposit and the licence fee.
- 3.36 After granting the NI Licence, Ofcom will complete the Award Process by publishing details of all valid bids, the identity of the bidders, the identities of the licensee and details of the licence fee paid. Ofcom will also refund any remaining initial deposits or

bid deposits (without any interest having accrued) to all unsuccessful applicants and to any applicants who withdrew before the last day for withdrawal, unless such initial deposits or bid deposits have been forfeited in accordance with the proposed NI Regulations.

### Activity rules

- 3.37 Part 6 of the proposed NI Regulations sets out the activity rules that are to applicants who have qualified to bid and bidders. Regulation 26 provides that where Ofcom are satisfied that any of the events set out in regulation 27 have occurred and that the occurrence would materially affect the outcome of the Award Process, the bidder or applicant concerned will forfeit their initial deposit (or bid deposit where one has been paid). In such circumstances the bidder may also be excluded from the Award Process by Ofcom giving that bidder or applicant written notice.
- 3.38 Regulation 27 of the proposed NI Regulations sets out the details of the events leading to exclusion from the Award Process. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group 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.
- 3.39 With regard to change occurring in the membership of the bidder group, change occurring as a result of a person ceasing to be a member of a bidder group is allowed. Equally, bidders and applicants are able to add members under the procedure set out at regulation 6. 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

- 3.40 Part 7 of the proposed NI Regulations sets out certain 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.
- 3.41 Regulation 29 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 NI Regulations may be made by fax, personal delivery or email.
- 3.42 Regulation 30 enables Ofcom to alter the date, time or place for delivery of any documents or for completion of any action in relation to the Award Process, where it would otherwise be impractical for such delivery or action to take place at the locations or within the times required.
- 3.43 Regulation 31 provides Ofcom with a general discretion to refund any sums paid to it in accordance with any provision of the proposed NI Regulations as Ofcom sees fit.

## Section 4

# General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007

### The legislative framework

- 4.1 These regulations are to be made under sections 30(1) and (3) and 122(7) of the 2006 Act. 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 2006 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) (the "2004 Regulations").

### The existing 2004 Regulations on spectrum trading

- 4.5 The 2004 Regulations are available on the website [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 NI 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 affect 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 affected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed. We will also update 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) Regulations 2007 (the "proposed amending regulations")**

4.25 The identity of the licensee to be granted the NI Licence to use the Spectrum Band will be determined by the Award Process. The licence granted will contain rights and obligations to use the Spectrum Band in Northern Ireland.

4.26 The proposed amending regulations would amend the 2004 Regulations to permit all types of transfers (described in the 2004 Regulations) of the wireless telegraphy licence of the class Spectrum Access for the frequencies 1785 to 1805 MHz (Northern Ireland). 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 the transfer of the NI Licence.

## Section 5

# General effect of the proposed Wireless Telegraphy (Register) (Amendment) Regulations 2007

### The legislative framework and the existing regulations

- 5.1 Under section 31(1) of the 2006 Act 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 2004/4155) (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) Regulations 2007

- 5.5 A draft of the proposed regulations is set out at Annex 7. The proposed regulations add a category of licence (that to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) Regulations 2007) for which information will be published on the register. The information will be the same information as is already registered under the existing 2004 Regulations.
- 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 will not provide precise details about individual transmitters due to security concerns. Information is currently limited only to the classes that became tradable in 2004.

## Section 6

# General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007

### The legislative framework

- 6.1 Under section 29(1) of the 2006 Act Ofcom may, if they consider 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 whom licences will be granted.

### The proposed regulations

- 6.4 A draft of the proposed order is set out at Annex 8.
- 6.5 Ofcom intends to grant a single Spectrum Access licence for the Spectrum Band, therefore the proposed order provides that Ofcom will only grant one licence for the Spectrum Band, determined by the application of the Award Procedures set out in the NI Regulations. The proposed order will be made and enter into force at the same time as the NI Regulations.

## Section 7

# Regulatory Impact Assessments

- 7.6 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.
- 7.7 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 The Wireless Telegraphy (Licence Award) Regulations 2007

### Proposal, purpose and intended effect

- 7.8 Following the December Consultation and Statement on the award of the available spectrum: 1785 – 1805 MHz, Ofcom has decided to award a technology neutral licence by means of an auction.
- 7.9 The draft NI Regulations to which this Impact Assessment relates, give effect to a sealed bid auction. Ofcom assessed various alternative auction formats in the context of the conditions particular to this auction. This format was the one which best met Ofcom's objectives in relation to this Award Process of ensuring the optimal use of the electro-magnetic spectrum having regard to the availability of, and demand for, the spectrum and to the desirability of promoting:
- the efficient management and use of the spectrum;
  - the economic and other benefits that may arise from use of the spectrum;
  - the development of innovative services; and
  - competition in the provision of electronic communications services.

### Introduction

- 7.10 The draft NI Regulations represent the culmination of a thorough process of consultation. Ofcom raised the possibility of co-ordinated award of spectrum in Ireland and Northern Ireland in the Spectrum Framework Review: Implementation Plan (SFR:IP), which was published in January 2005. Ofcom and ComReg published jointly a Consultation and Statement on the award of the Spectrum Band in December 2005 and December 2006 respectively.
- 7.11 The Impact Assessment in the December 2005 Consultation focused on the policy options put forward for the form of licences offered and on the auction design and it

evaluated the relative economic benefits of the following options for the Award Process:

- co-ordinated: a co-ordinated Award Process for licences in Ireland and Northern Ireland in 2006 followed by Great Britain award in 2007/08;
- all UK: Ireland Award Process in 2006 and a later all UK Award Process in 2007/08;
- separate and un co-ordinated Award Processes in Ireland and Northern Ireland: Three separate Award processes are assumed to be made as follows: in Ireland in 2006, Northern Ireland in 2006 and Great Britain in 2007/08.

7.12 Ofcom concluded that the first option would generate the greatest net economic benefit, and the majority of respondents to the consultation were in agreement with this view. Since the auction format is the subject of this regulation, Ofcom is only discussing the assessment of the format of the Award Process in this Regulatory Impact Assessment.

### **Format of the award process**

7.13 Ofcom set out its general policy on the award of spectrum in the SFR:IP consultation published in January 2005. This document set out Ofcom's plans for the future award of spectrum including this Spectrum Band. It considered three options for awarding spectrum: auctions, comparative selection and first come first served. Ofcom concluded that, in general, auctions were the best mechanism for awarding licences where the nature of the spectrum available indicated that demand was likely to exceed supply. Where this was the case, auctions were most likely to lead to the assignment of the spectrum to the uses and users which valued it most highly.

7.14 Ofcom and ComReg have carried out research into the potential demand for this spectrum and has identified a wide range of potential uses for the spectrum which are discussed in the December Consultation. The research also canvassed the potential demand for the Spectrum Band. Though this only gives an indicative view of demand, because the likelihood of participating in an auction may be overstated when no commitment is required, Ofcom's research did show that that demand appears to outstrip supply.

7.15 Ofcom, therefore believes that its assessment in the SFR:IP also applies to the Spectrum Band and that an auction is the best option for awarding the licence to use the Spectrum Band.

### **Auction format options**

7.16 Analysing the options for auction format is complicated by the potential synergies that may be available to an operator wishing to operate both Northern Ireland and Ireland. This means that bidders wanting to exploit these synergies could face possible aggregation risks - i.e. there is a risk that a firm which only wins one licence could end up stranded having overpaid for it because their bid included part of the premium they expected from holding both licences. An appropriate way to deal with this issue would be to have a combinatorial auction which would allow firms to enter separate bids for any or all of the following: both licences together, or each licence separately. However this option is not legally feasible.

7.17 Ofcom (and ComReg) has therefore tried to find the next best solution and has considered four options:

- two sequential sealed bid auctions
  - two sequential simultaneous multi-round ascending (SMRA) auctions
  - two simultaneous SMRA auctions
  - two simultaneous sealed bid auctions
- 7.18 Ofcom has conducted an overall assessment of the impact of these options because the interests of businesses and consumers are generally aligned. The key criteria used to assess these options are:
- promoting the efficiency of the outcome of the auctions
  - facilitating the realisation of synergies in the auction if that is the most efficient outcome
  - encouraging participation in the auction if there are bidder asymmetries
  - dealing with common value uncertainty
  - simplicity and practicality
- 7.19 The fourth option, two simultaneous sealed bid auctions, has been dismissed because it does not allow the realisation of synergies - bidders would have no way of judging their likelihood of winning both auctions and would essentially be unable to mitigate aggregation risks. The other three options are discussed in more detail in the paragraphs below.

### **Sequential sealed bids**

- 7.20 Holding sequential auctions facilitates the realisation of synergies to some degree. Bidders can set their strategy for the second auction contingent on the outcome of the first auction. This eliminates the possibility of overpaying for whichever licence is auctioned second.
- 7.21 A second advantage of this format is that sealed bid auctions should encourage 'weak' bidders to participate in the auction more than an SMRA format. Ofcom's research indicates that bidder asymmetry could be an issue in this auction, although the evidence is far from conclusive. Finally, a sequential sealed bid process also benefits from being practical and low cost to implement, and carries minimal risk of auction failure because the bidding process is not complex.
- 7.22 The main disadvantages of a sequential process is that the winner of the first auction still runs the risk of not winning the second licence and ending up having overpaid for the first licence. This could affect bidding strategies and lead to inefficient outcomes, in particular synergies may not be fully realised even when they turn to be the most efficient outcome. If there is a significant difference in the size of the two potential markets, holding the first auction in the jurisdiction which has the larger potential market may limit the potential impact of aggregation risks. This is because the synergies will have less of an impact on the viability of services in the jurisdiction with the larger potential market.
- 7.23 The choice of pricing rule is also an important factor in the effectiveness of this option. If there is a first price rule, i.e. the winning firm pays what they bid, firms wanting licences in both countries will be cautious about how much of the potential

“synergy premium” they bid in the first auction, in case they do not win the second<sup>2</sup>. However, if there are firms which only want to compete in the first auction, they will bid aggressively because they will be aware that the other bidders are likely to shade their bids. A first price rule therefore carries a risk that bidder wanting to exploit the synergies in operating in Ireland and Northern Ireland may not win the licences even though it valued the licences most highly.

- 7.24 A second price rule, where the winning firms pay the value of the next highest bid, is better at allowing synergies to be realised than a first price rule. Firms which want to acquire both licences have an incentive to bid more aggressively with regard to the “synergy premium”, since if they win they will only pay the second highest bid. Aggregation risks are not fully eliminated, but should be lower than under a first price rule.

### Sequential SMRA auctions

- 7.25 The sequential nature of this option makes its impact similar to the sequential sealed bid option. However, it has some additional disadvantages. Firstly, as discussed above, bidder asymmetry is a potential concern. The more important bidder asymmetry is, the more likely it is that an SMRA format discourages participation in the auctions because ‘weak’ bidders will fear that ‘strong’ bidders will simply outbid them because they can the amount others bid.
- 7.26 Secondly, SMRA auctions are more complex to run than sealed bid auctions and given the moderate amount of spectrum being auctioned together with the potential that the number of participants may also be moderate, a simpler auction format should be preferred on grounds of proportionality.
- 7.27 If common value uncertainty was high, SMRA auctions would have an advantage over sealed bid auctions, but common value uncertainty appears to be low in importance in this award process - there is a wide range of potential uses which suggest that bidders’ valuations are likely to be more independent than common.

### Simultaneous SMRA auctions

- 7.28 In theory it is possible for the simultaneous SMRA option to allow for the realisation of synergies. A standard SMRA approach would not be very effective in mitigating aggregation risks, however, and a number of additional features would need to be added to address this issue.
- 7.29 Firstly, bidders would need to be permitted to withdraw their bids to avoid becoming stranded and overpaying for one licence. In this case the bid price would revert to that of the previous highest bidder. Secondly, the normal practice in an SMRA is to require that bidders remain active in each round in order to have the right to bid in the next round<sup>3</sup>. Not having this type of “activity rule” could enable bidders to gain information about others’ preferences and devise a strategy that reduces the risk of being stranded with one licence.

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<sup>2</sup> In addition, firms will try to bid the minimum necessary to win each licence under this pricing rule, giving them another incentive to shade their bids.

<sup>3</sup> There may be some slack in the rule in the early stages, but in later stages the bidders are required to be fully active.

- 7.30 In practice, however, it appears difficult to draw up such rules in ways which do not carry unwanted side-effects and run the risk of inefficiency. The auction process itself may lead to inefficiency for example:
- if there were several withdrawals for one licence, the price could drop down to a level where the winner was not the firm which valued the single licence most highly.
  - if bidders do not have to bid each round to remain in the auction, the auction may end because participants may not want to signal crucial information about their bidding strategies to their rivals.
- 7.31 Even if such rules could be drawn up, bidding strategies may become very complex and firms may make sub-optimal bidding decisions because of the difficulty of determining the best strategy. For example, the ability to withdraw in an SMRA is usually accompanied by a penalty<sup>4</sup>, therefore bidding strategies become multi-dimensional problems because they have to take into account to the interrelationship between the potential penalties for withdrawing, how much of the synergy premium to bid on each licence and the potential valuations of other bidders.

### **Costs to Ofcom**

- 7.32 The costs of Ofcom's decision to auction the NI Licence 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 Ofcom's analysis indicates that the Award Process is very unlikely to have a negative financial impact on the public sector.

### **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 On the basis of the available evidence, Ofcom believes that a sequential sealed bid Award Process with a second price rule 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. The principal 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) Regulations 2007**

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

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<sup>4</sup> This is normally the case in order to prevent manipulation or malicious disruption of the auction and is typically set as the difference between the bid that is withdrawn and the next highest bid (or the reserve price if there were no other bid).



- 7.36 This Impact Assessment for the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007 relates to Ofcom's proposed Award Process for the NI Licence for the Spectrum Band. The purpose of these regulations is to permit the transfer of all rights and obligations relating to the NI Licence, also known as spectrum trading. Ofcom intends that outright total transfer is permitted, but not concurrent or partial transfer.

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

- 7.37 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment in the Spectrum Trading and Wireless Telegraphy Register Regulations 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 Spectrum Band.
- 7.38 Ofcom considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers. Ofcom can see no reason why its general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer. It is unlikely that the additional coordination costs for third parties, that might arise as a result of concurrent or partial transfers, would be significant. This is due in particular because economic and technical constraints would appear to limit the potential to increase the number of players with access to the Spectrum Band.
- 7.39 It is possible that radio microphone and other short range device users could compete for the NI Licence or subsequently acquire access to the Spectrum Band through spectrum trading because the proposals for the award envisage that the Spectrum Band will be technology and application neutral. This will only be possible, however, provided that a mechanism for managing the Spectrum Band for users of these technologies exists. This will minimise any potential coordination costs with third parties if the spectrum were acquired for these uses. The potential for organisations to act as Band Managers (spectrum management organisations) has been considered by Ofcom.

### **Costs to Ofcom**

- 7.40 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 Spectrum Bands within the framework should require little additional cost.

### **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.

### **Conclusion**

- 7.43 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) Regulations 2007**

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

- 7.44 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.
- 7.45 The intended effect of this proposal is to enable information about the NI 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**

- 7.46 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004, (published December 2004), which established the Register. This proposed amendment to those regulations only has the effect of including the specified Spectrum Band within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- 7.47 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.
- 7.48 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**

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

### **Conclusions**

- 7.51 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) Order 2007**

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

- 7.52 Following the December Consultation and Statement on the award of available the spectrum: 1785 -1805 MHz, Ofcom has decided to award a technology neutral licence by means of an auction.
- 7.53 The draft Limitation Order to which this Impact Assessment relates is intended to allow Ofcom to limit the number of users of the Spectrum Band through the award of a single licence, rather than not limiting the number of users through making the use of the spectrum licence exempt.
- 7.54 This will enable Ofcom to proceed with the award of this spectrum by auction. The way which Ofcom intends to do this is set out in the NI Regulations.

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

- 7.55 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Spectrum Band are lower than the costs of making use of the spectrum licence exempt.
- 7.56 Ofcom is intending to award the NI Licence on a technology and application neutral basis, therefore although there may be types of use such as short range devices that could use the Spectrum Band on a licence exempt basis, there are many others where this would impose very high coordination costs and/or could make effective use of the Spectrum Band impossible. Ofcom believes that its proposed method of auctioning one licence, but with the possibility that a band manager could acquire the NI Licence for exploitation by Short Range Devices (SRDs), addresses the needs of both types of service without unduly favouring either.

### **Costs to Ofcom**

- 7.57 The costs to Ofcom of limiting the number of licences in the Spectrum Band to one relate mainly to costs of awarding the spectrum. Ofcom is proposing to auction the Spectrum Band, therefore the costs to Ofcom would be those of carrying out the Award Process.
- 7.58 In comparison, licence exemption would mean that Ofcom did not incur the costs of the Award Process. However, as discussed in the previous section, the costs to business could be very high under licence exemption because of interference and frequency co-ordination costs. It is very likely that the Spectrum Band would be unworkable for some uses and thus economic losses could be incurred through the effective ruling out of potential efficient uses.
- 7.59 Ofcom also notes that the administrative costs of the Award Process are likely to be small in relation to the benefit generated for the economy and that an auction would be very unlikely to have a negative financial impact on the public sector.

### **Business sectors affected**

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

### **Conclusion**

- 7.62 Ofcom has assessed the impact of limiting or not limiting the number of licences in the Spectrum Band 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

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 19 January 2007**.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, 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), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to first [cliff.mason@ofcom.org.uk](mailto:cliff.mason@ofcom.org.uk).

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

### Cliff Mason

3rd Floor

Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7783 4353

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Cliff Mason on 020 7783 4353.

## Confidentiality

Ofcom thinks 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 (when respondents confirm on their response cover sheet that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

## Next steps

Following the end of the consultation period, Ofcom intends make the regulations as soon as possible.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.

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, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director for Scotland, who is Ofcom's Consultation Champion:

Vicki Nash  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 0141 229 7401  
Fax: 0141 229 7433  
E-mail: [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 organisations 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, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- 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 cover sheet 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 in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. 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): Cliff Mason

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

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 to be confidential, 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. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

*Do you have any comments on the proposed statutory instruments set out in this notice for the award of the NI Licence to use the Spectrum Band?*

## **Annex 5**

# **Draft Wireless Telegraphy (Licence Award) Regulations 2007**

**2007 No.**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) Regulations 2007**

*Made* - - - -

*Coming into force* - -

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

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

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2007 and shall come into force on [ XX March] 2007.

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

**Interpretation**

**2.** In these Regulations —

- (a) “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- (b) “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;
- (c) “bid” has the meaning given in regulation 16;
- (d) “bid deposit” has the meaning given in regulation 18;
- (e) “bidder” has the meaning given in regulation 10(1);
- (f) “bidding document” has the meaning given in regulation 15(a)
- (g) “bidder group” means, in relation to an applicant or bidder:—

- (i) that applicant or bidder;
- (ii) each associate of that applicant or bidder; and
- (iii) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 3;
- (h) “last day for withdrawal” has the meaning given in regulation 9(1);
- (i) “licence” means the wireless telegraphy licence to establish or use stations for wireless telegraphy or install or use apparatus for wireless telegraphy in Northern Ireland operating in the frequencies 1785 megahertz to 1805 megahertz to be granted pursuant to these Regulations;
- (j) “material interest” means, whether held directly or indirectly:—
  - (i) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006**(b)**) in —
    - (aa) shares carrying more than twenty five percent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
    - (bb) shares, where the consent of the holder of those shares is required for the conduct of any business of the applicant or bidder; or
  - (ii) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;
- (k) “OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process and published on their internet website;
- (l) “pounds” means pounds sterling;
- (m) “sealed bid” has the meaning given in regulation 17(2);
- (n) “sealed bid delivery period” has the meaning given in regulation 14(1)(a);
- (o) “valid bid” has the meaning given in regulation 22;
- (p) “winning bid” has the meaning given in regulation 23; and
- (q) “winning bidder” means the bidder who submitted the winning bid.

## PART 2

### APPLICATION STAGE

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

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

#### **Application**

- 4.**—(1) Only a body corporate may apply to OFCOM for the licence.
- (2) A body corporate may only make one application.
- (3) To apply for the licence, a body corporate must, on the day specified by OFCOM for receipt of applications —
- (a) deliver a sealed envelope to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA or Landmark House, The Gasworks, Ormeau Road, Belfast, BT7 2JD within the times on that day specified by OFCOM, containing —
    - (i) a document containing the application information required by Schedule 1, 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 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
  - (iii) for each person who is not an associate of the applicant which the applicant wishes to join its bidder group, a document in the form set out in Schedule 3, 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; and
  - (b) have paid 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 provide notification of the day and times mentioned in paragraph (3) by publication of that information on their internet website.

## 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 latest time by which each applicant must notify OFCOM under paragraphs (3) and (4).
- (2) On receipt of that notice, each applicant shall examine the names of the other applicants and their associates and determine if any member of its bidder group is also an associate of another applicant or an applicant.
- (3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or an applicant, it must notify the other applicant and OFCOM by the time specified in the notice given by OFCOM under paragraph (1) of that fact, and OFCOM shall specify a further time by which 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 an applicant; and
  - (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 4(3)(a)(i) and (ii).
- (4) Where an applicant determines that no member of its bidder group is an associate of another applicant or an applicant it must notify OFCOM of that fact by the time specified in the notice given by OFCOM 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 of that fact to each of the applicants concerned and specify a day by which each applicant concerned must —
- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
  - (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 4(3)(a)(i), (ii) and (iii).
- (6) After the last day specified by OFCOM under paragraphs (3) and (5), OFCOM shall record the members of each applicant's bidder group.

#### **Subsequent changes to bidder groups**

- 6.—**(1) After the recording by OFCOM of the members of each applicant's bidder group, an applicant may change its bidder group but, in relation to the award process, the applicant shall be subject to regulations 7(2) and 26 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, that applicant must notify OFCOM of the change and submit revised versions of the documents provided under regulation 4(3)(a)(i) and (ii).

(3) To add a person who is not an associate of the applicant to its bidder group, an applicant must deliver to OFCOM a document in the form set out in Schedule 3 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 who are qualified to bid**

**7.—**(1) OFCOM shall determine whether each applicant who 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 where 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 was —
  - (i) to a member of the applicant's bidder group;
  - (ii) to OFCOM;
  - (iii) for the purpose of raising finance for the applicants' application and was to a provider of finance; or
  - (iv) for the purpose of enabling the recipient to decide whether to participate as a member of the applicant's bidder group;
- (g) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
- (i) any person who is a member or a director or employee of a member of the applicant's bidder group and 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, by a time notified by OFCOM, provide to OFCOM any information or documentation which OFCOM require to make their determination.

(5) If an applicant does not provide such information or documentation within the notified time, 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 identity of the other applicants who are so qualified and shall publish the identity of all applicants who are qualified to bid in the award process 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 —

- (a) notify all other applicants of the withdrawal; and
- (b) refund, on completion of the award process, the applicant's initial deposit except where the initial deposit has been forfeited under regulation 26.

(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 applicants who are qualified to bid for the licence and have not withdrawn from the award process ("bidders").

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants who were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not already been forfeited under regulation 26) 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 identity of the bidders on OFCOM's internet website along with a statement of whether OFCOM will proceed to grant licences in accordance with Part 4 or Part 5 of these Regulations.



## PART 4

### PROCEDURE WHERE THERE IS ONLY ONE BIDDER

#### Payment of licence fee

**11.**—(1) Where there is only one bidder, OFCOM shall give notice to that bidder of the day by which that bidder must pay into OFCOM's bank account with accompanying information that identifies the bidder, a sum determined in accordance with paragraph (3).

(2) The licence fee shall be fifty thousand pounds.

(3) The sum which that bidder shall pay to OFCOM shall be —

(a) where the initial deposit has not been forfeited in accordance with regulation 26, a sum equal to the licence fee less the initial deposit;

(b) where the initial sum has been so forfeited, a sum equal to the licence fee.

(4) If the bidder fails to make payment in accordance with this regulation it shall —

(a) not be entitled to the grant of the licence; and

(b) not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 26) be forfeited.

#### Grant of licence

**12.** Where OFCOM have received from the bidder the sum determined in accordance with regulation 11(3) by the time specified, OFCOM shall grant the bidder the licence.

#### Completion of the award process

**13.** After the grant of a licence, OFCOM shall complete the award process by —

(a) publishing on their internet website the identity of the person to whom the licence has been granted and the total licence fee paid; and

(b) refunding to applicants who were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not already been forfeited under regulation 26) but not any interest which has accrued on the deposits.

## PART 5

### PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

#### Notice to bidders

**14.**—(1) Where there is more than one bidder, OFCOM shall give notice to each of the bidders of —

(a) the day on which and the times on that day within which sealed bids must be delivered to OFCOM (the "sealed bid delivery period");

(b) the identity of all bidders; and

(c) a password which the bidder must specify on its bidding document to confirm that it has originated from that bidder.

(2) OFCOM shall publish on their internet website the identity of the bidders to whom OFCOM have given notice and the sealed bid delivery period.

#### Bid documentation

**15.** The bid documentation shall consist of —

- (a) a document in the form set out in Schedule 4 completed by the bidder in accordance with regulation 16, signed on its behalf by two authorised persons and bearing that bidder's password (a "bidding document"); and
- (b) a document in the form set out in Schedule 5, completed in respect of the bidder and signed on its behalf by two authorised persons.

### **Completion of the bidding document**

**16.**—(1) Where a bidder wishes to specify a sum on the bidding document which it commits to pay for the licence (a "bid") it must specify an amount in whole pounds in words and figures which must be greater than or equal to fifty thousand pounds.

### **Submission of sealed bids to OFCOM**

**17.**—(1) The completed bid documentation must be placed in a non-transparent envelope and sealed.

(2) The sealed non-transparent envelope containing the bid documentation constitutes a sealed bid.

(3) Sealed bids must be delivered to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA or Landmark House, The Gasworks, Ormeau Road, Belfast BT7 2JD and be placed in the box marked for delivery of sealed bids during the sealed bid delivery period.

(4) Only a bidder may submit a sealed bid to OFCOM.

(5) A bidder may only submit one sealed bid.

### **Bid deposit**

**18.**—(1) In addition to the initial deposit paid at the time of application, a bidder must, on the day specified for delivery of sealed bids under regulation 14, 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.

(2) The further sum to be paid under paragraph (1) shall —

- (a) where the initial deposit has not been forfeited in accordance with regulation 26, be a sum representing the difference between —
  - (i) the bidder's initial deposit; and
  - (ii) the sum which that bidder has specified on the bidding document; or
- (b) where the initial deposit has been forfeited in accordance with regulation 26, the sum which that bidder has specified on the bidding document.

(3) The total amount on deposit after payment of the further sum constitutes the bid deposit.

### **Opening of sealed bids**

**19.** OFCOM shall only open sealed bids which were submitted to OFCOM in accordance with regulation 17(1) and (3) and shall reject sealed bids which were not so submitted.

### **Incomplete or defective completion of bid documents**

**20.**—(1) Where, due to the manner of completion, bid documentation is incomplete or defective but OFCOM can identify the bidder and ascertain the bidder's intention in relation to the bid, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified time that OFCOM have correctly identified the bidder and ascertained its intention in relation to the bid.

(2) Where the bidder confirms in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder

and ascertained the bidder's intention, the sealed bid in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not confirm in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be rejected by OFCOM.

### **Rejection of opened sealed bids from the award process**

**21.**—(1) OFCOM shall also reject and exclude from the award process the entirety of an opened sealed bid where —

- (a) in any case where regulation 20(1) does not apply, the bidder has not completed the bid documentation in accordance with the requirements of these Regulations;
- (b) the sealed bid was submitted by a person other than a bidder;
- (c) the bidder has submitted more than one sealed bid; or
- (d) the entirety of the bid deposit has not been paid into OFCOM's bank account in accordance with regulation 18.

(2) OFCOM shall notify any bidder whose sealed bid has been rejected and shall give reasons for the rejection.

(3) OFCOM shall also notify any bidder to whom a notice was given under regulation 14(1) but in respect of whom a sealed bid was not opened.

### **Valid bids**

**22.**—(1) Only bids specified on a bidding document in accordance with regulation 16 and contained in a sealed bid which has not been rejected by OFCOM ("valid bids") shall be taken into consideration for the purpose of determining the winning bid.

(2) Any bidder to whom a notice was given under regulation 14(1) who does not submit a valid bid shall be excluded from the award process and shall not receive a refund of its initial deposit, or its bid deposit where a bid deposit has been paid, which shall (where not already forfeited under regulation 26) be forfeited.

### **Winning bid and determination of licence fee**

**23.**—(1) The winning bid shall be the highest valid bid.

(2) In the event that there is more than one bid of equal highest value, OFCOM shall employ a method of random selection amongst those bids to determine which amongst them shall be the winning bid.

(3) The licence fee shall be a sum equal to the amount that is the higher of:

- (a) the highest valid bid that was not the winning bid; and
- (b) fifty thousand pounds.

### **Grant of licence and payment of refund to winning bidder**

**24.**—(1) After determining the winning bid, the identity of the winning bidder and the licence fee in accordance with regulation 23, OFCOM shall

- (a) grant the winning bidder the licence; and
- (b) refund to the winning bidder the difference between its bid deposit and the licence fee.

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

**25.** After the grant of the licence, OFCOM shall complete the award process by —

- (a) publishing the details of all valid bids, the identity of all bidders and the person to which the licence was granted, and the licence fee paid; and
- (b) refunding to applicants who were not qualified or who withdrew in accordance with regulation 9 and to unsuccessful bidders the initial deposits or bid deposits, where such deposits have not been forfeited under regulation 22(2) or 26, but not any interest which has accrued on the deposits.

## PART 6

### ACTIVITY RULES

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

**26.** If, in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 28 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process —

- (a) the initial deposit, or the bid deposit where a bid deposit has been paid, shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

#### **Events**

**27.** The events referred to in regulation 27, in relation to an applicant who is qualified to bid or bidder, are —

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group is 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 is 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, is disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person except where the disclosure is —
  - (i) to a member of that applicant's or bidder's bidder group;
  - (ii) to OFCOM;
  - (iii) for the purpose of raising finance for a bid and is to a provider of finance; or
  - (iv) for the purpose of enabling the recipient 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 is 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 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;
- (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 is 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**

**28.** 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**

**29.** 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 their internet website and must deliver that notice to OFCOM —

- (a) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA;
- (b) by fax to a number dedicated to the award process which is published by OFCOM on their internet website; or
- (c) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website.

#### **Changes to timing or location**

**30.—**(1) Paragraph (2) applies where OFCOM determine that it is impracticable for any reason —

- (a) for any document which is to be delivered to OFCOM's premises under these Regulations to be delivered at the place or within the times specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed within the times specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify applicants and bidders that —

- (i) delivery must be made on a different day or within different times on that day or at a different place;
- (ii) the action must be completed on a different day or within different times.

#### **Refunds**

**31.** 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 or the licences.

XX February 2007

Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

## SCHEDULE 1

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 three 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) 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 3 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 —

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;
- (d) state whether any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;
- (e) state whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed confidential information,

whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure —

- (i) was to a member of the applicant's bidder group; or
- (ii) was to OFCOM;
- (f) state whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (g) state whether any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process and provide a description of the services concerned; and
- (h) state whether (and provide a description of any circumstances in which) any person who is a member or a director or employee of a member of the applicant's bidder group and also a director or employee of a member of another bidder group is —
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups.

## **6. Other information**

Provide a brief description of the substance of —

- (a) agreements (if any) relating to the management of the applicant; and
- (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its bidder group or its directors or officers.



## SCHEDULE 2

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) 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 regulation 26 and 27 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 3

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) 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 26 and 27 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), 26 and 27 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 26 and 27 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 —

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

## SCHEDULE 4

Regulation 15(a)

### BIDDING DOCUMENT

Bidder's full name: (the "bidder")  
Bidder address:  
Telephone number:  
Fax number:  
E-mail address:  
Password allocated by the Office of Communications ("OFCOM"):  
Bid amount in words and figures:

The submission of this bidding document to OFCOM constitutes an irrevocable undertaking to OFCOM by the bidder to pay the sum specified for the licence, if that is determined to be the winning bid by OFCOM in accordance with the Wireless Telegraphy (Licence Award) Regulations 2007 ("Regulations").

We the undersigned declare that we are entitled to commit the bidder irrevocably, according to the bid expressed above, to accept the grant of the licence and pay the licence fee as determined by OFCOM in accordance with the Regulations.

---

Signed

Name

For and on behalf of the bidder

Date

---

Signed

Name

For and on behalf of the bidder

Date

---

## SCHEDULE 5

Regulation 15(b)

### BIDDER DOCUMENT

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

- (a) all of the statements made in any document submitted to OFCOM under regulation 4(3)(a), 5(5)(b) or 6 of the Wireless Telegraphy (Licence Award) Regulations 2007 (“the Regulations”) are and remain true;
- (b) it has complied with the Regulations and all requirements of OFCOM under the Regulations; and
- (c) it has notified OFCOM in accordance with regulation 6 of the Regulations of any changes to its bidder group subsequent to its application.

## **Annex 6**

# **Draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007**

**2007 No.**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Spectrum Trading) (Amendment)  
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) Regulations 2007 and shall come into force on XX March 2007.

**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 —

“Spectrum Access 1785 MHz to 1805 MHz (Northern Ireland)”

\*\*\*

XX February 2007  
Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

---

(a) 2006 c. 36

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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

## **Annex 7**

# **Draft Wireless Telegraphy (Register) (Amendment) Regulations 2007**



**2007 No. XXX**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) 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) Regulations 2007 and shall come into force on XX March 2007.

**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 —

“Spectrum Access 1785 MHz to 1805 MHz (Northern Ireland)”

\*\*\*

XX February 2007  
Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

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(a) 2006 c. 36

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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

## **Annex 8**

# **Draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007**

2007 No. \*\*\*

## ELECTRONIC COMMUNICATIONS

### The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) 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 Order OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

#### Citation, commencement and extent

1.—This Order may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007 and shall come into force on XX March 2007.

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

#### Limitation of licences

3.—(1) OFCOM will grant one wireless telegraphy licence for the use of the frequency 1785 megahertz to 1805 megahertz in Northern Ireland.

(2) The criteria for determining the number of licences to be granted for the use of these frequencies and the persons to whom the licences will be granted shall be determined by OFCOM using the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2007(b).

XX February 2007

Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

**EXPLANATORY NOTE**

*(This note is not part of the Order)*