



# 1785 - 1805 MHz Award: Statement on the making of regulations

Statement

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## Section 1

# Summary

- 1.1 Ofcom has held two consultations, in December 2005 and in December 2006 in connection with the award of a wireless telegraphy licence for use of the spectrum band 1785-1805 MHz in Northern Ireland. It has also published an Information Memorandum in respect of this award in December 2006.
- 1.2 Ofcom has carefully considered the responses to the December 2005 consultation. The last consultation in December 2006 on the draft statutory instruments made in connection with the award did not receive any responses.
- 1.3 Ofcom has now made the four statutory instruments and submitted them for registration and publication. They will come into force on 8th March 2007.
- 1.4 Ofcom is provisionally indicating in this Statement that it expects that the date of receipt of application forms will be on 21 March 2007, although the exact date will be confirmed by Ofcom via publication on its website after the statutory instruments have come into force.
- 1.5 The relevant section of the Ofcom website for information on Ofcom's spectrum award programme and the award of the Spectrum Bands is [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/).

## Section 2

# Introduction

- 2.1 This Statement sets out Ofcom's decisions in relation to the statutory instruments it needs to make in connection with the award of a wireless telegraphy licence for the use of the spectrum band 1785-1805 MHz in Northern Ireland (the "Spectrum Band").
- 2.2 Ofcom published on 14 December 2006 a notice<sup>1</sup> of its proposal to make regulations and invited comments on these by 19 January 2007. No responses to this consultation document were received.
- 2.3 The draft statutory instruments published for consultation in December 2006 (the "December 2006 Consultation") followed a previous consultation and decisions relevant to this award:
- A consultation on the detailed proposals for the award, published on 15 December 2005<sup>2</sup> (The "December 2005 Consultation"), and two seminars, followed by a statement<sup>3</sup> on the subsequent decisions, published on 14 December 2006 (the "December Statement").
- 2.4 The Information Memorandum<sup>4</sup> for this award (the "Information Memorandum") was also published on 14 December 2006.
- 2.5 The award of the Spectrum Band is part of a programme of awards that was described in the Spectrum Framework Review: Implementation Plan Interim Statement. Further information on the spectrum awards programme can be found on Ofcom's website in its dedicated section:  
[www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/)

## Making and publication of the final regulations in connection with the award

- 2.6 Ofcom made the four statutory instruments relevant to this award on 14 February 2007. These will be available on the website of the Office of Public Sector Information (OPSI)<sup>5</sup>, under the titles listed at paragraph 3.2. Copies in draft form are also annexed to this statement for indicative purposes in the form submitted for registration and publication after their making by Ofcom. OPSI is the only authorised source for published statutory instruments.

## Document structure

- 2.7 The following section of this Statement provides further details of Ofcom's decisions following the December 2006 consultation.
- 2.8 Section 4 describes the next steps for the award.

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<sup>1</sup> See <http://www.ofcom.org.uk/consult/condocs/award1785/award1785.pdf>

<sup>2</sup> See [http://www.ofcom.org.uk/consult/condocs/availspec/1785\\_1805.pdf](http://www.ofcom.org.uk/consult/condocs/availspec/1785_1805.pdf)

<sup>3</sup> See <http://www.ofcom.org.uk/consult/condocs/availspec/statement/statement.pdf>

<sup>4</sup> See [http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_1785/im/1785im.pdf](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1785/im/1785im.pdf)

<sup>5</sup> See <http://www.opsi.gov.uk>

- 2.9 Annex 1 includes draft copies of the four statutory instruments in the form submitted for registration and publication after their making by Ofcom.
- 2.10 Annex 2 includes copies of the Regulatory Impact Assessments for the four statutory instruments in the form placed in the libraries of both Houses of Parliament.

### Section 3

## Ofcom's decisions following the December 2006 Consultation

- 3.1 In the December 2006 Consultation Ofcom gave notice of, and consulted on, its proposals to make regulations in connection with the award of wireless telegraphy licences for use of the Spectrum Band.
- 3.2 The proposals included four draft statutory instruments, which can be briefly summarised as follows:
- The Wireless Telegraphy (Licence Award) Regulations 2007 set out the process to be followed for the award of a licence for use of the Spectrum Band and the rules that will apply to that process.
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007 provide the scope for subsequent transfers of licences in the Spectrum Band, as described in the Statement published on 14 December 2006.
  - The Wireless Telegraphy (Register) (Amendment) Regulations 2007 set out the provisions necessary to allow the publication of details of the licences for use of the Spectrum Band in the wireless telegraphy register.
  - The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007 sets out how the number of licences in the Spectrum Band will be limited for the time being as a result of the award process.
- 3.3 Since the above draft regulations relating to the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007 and the Wireless Telegraphy (Register) (Amendment) Regulations 2007 were published in the December 2006 consultation Ofcom has also completed projects regarding Recognised Spectrum Access for Radio Astronomy and in connection to Licensing in the 71-76 GHz, 81-86 GHz and 64-66 GHz bands. As these projects also involved making amendments to the Wireless Telegraphy (Spectrum Trading) Regulations 2004 ("the Trading Regulations") and the Wireless Telegraphy (Register) Regulations 2004 ("the Register Regulations"), Ofcom has combined all changes to the Trading Regulations in one statutory instrument and all changes to the Register Regulations in another statutory instrument. Accordingly the statutory instruments and Regulatory Impact Assessments in Annex 1 and 2 respectively, reflect these revisions.
- 3.4 The licence award regulations give effect to Ofcom's policy in relation to the determination of the winning option and the winning bidder as set out in the December Statement and the Information Memorandum. As stated in the Executive Summary of the Information Memorandum, if the Northern Ireland licence remains unsold, Ofcom will determine how to proceed in the light of circumstances at that time.
- 3.5 No responses were received to the December 2006 consultation.

- 3.6 Ofcom has noted that the Regulatory Impact Assessment which related to the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007, which was published in the December 2006 consultation, did not make it clear that all types of transfer would be permitted. Accordingly, Ofcom has revised the text in the relevant Regulatory Impact Assessment in Annex 2 of this document to indicate that all types of transfers, i.e. concurrent, partial and total transfers will be permitted. This position reflects the Information Memorandum which stated that all rights and obligations under the Northern Ireland Licence will be tradable.



## Section 4

# Next steps

- 4.1 Ofcom made the four statutory instruments in connection with the award process on 14 February 2007 and they will come into force on 8 March 2007. Drafts of these statutory instruments are annexed to this Statement in the form submitted for registration and publication after their making by Ofcom for indicative purposes. The statutory instruments will be officially published on OPSI's website in due course at [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 4.2 Ofcom provisionally expects that the date of receipt of application forms will be on 21 March 2007. Ofcom will publish the exact date and times on its website at: [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/), once the Licence Award Regulations have come into force.
- 4.3 All relevant information and documents relating to the award of the Spectrum Bands will be published at [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/). For example, Ofcom will make electronic documents available for download, once they are available, in the form prescribed by the Schedules to the Wireless Telegraphy (Licence Award) Regulations 2007.
- 4.4 As set out in section 5 of the Information Memorandum, the award process for the Northern Ireland Licence is expected to last approximately 25-35 business days from the application date.

## Annex 1

# Draft statutory instruments

A1.1 This annex includes a copy of the statutory instruments as made by Ofcom on 14 February 2007 and in the form submitted for registration and publication. These are marked as draft because OPSI is the only authorised source for published statutory instruments.

A1.2 The statutory instruments are:

- The Wireless Telegraphy (Licence Award) Regulations 2007;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007;
- The Wireless Telegraphy (Register) (Amendment) Regulations 2007; and
- The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007.

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STATUTORY INSTRUMENTS

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**2007 No. 378**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - *14th February 2007*

*Coming into force* - - *8th March 2007*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by sections 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 8th 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<sup>(a)</sup>) 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 at 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;

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<sup>(a)</sup> 2006 c.45

- (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.

## 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 regulations 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.** 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 the sum equal to the amount the highest valid bid that was not the winning bid except where there are no valid bids other than the winning bid, in which case the licence fee shall be 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 27 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 26, 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.

DRAFT

14th February 2007

*Ed Richards*  
Chief Executive of the Office of Communications  
For and by the 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 the 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:

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 ("the 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.

## **EXPLANATORY NOTE**

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

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency band 1785 megahertz to 1805 megahertz in Northern Ireland.

One licence will be granted in accordance with the procedure set out in these Regulations.

To apply a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) in either London or Belfast on a day specified by OFCOM on their internet website. Information is required about applicants’ bidder groups, a term defined in regulation 2(g). An initial deposit of twenty five thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

Regulation 5 provides for a procedure under which overlaps between applicants’ bidder groups can be drawn to the attention of the applicants and time is allowed for applicants to notify OFCOM of any changes to bidder groups which have the effect that such overlaps are removed. An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 7(2)).

OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 7(3). Under regulation 8, OFCOM will publish the identity of all applicants qualified to bid on their internet website.

OFCOM will follow the procedure in Part 4 of these Regulations where there is only one bidder, or the procedure in Part 5 of these Regulations where there is more than one bidder.

Under Part 4, where there is only one bidder the licence fee will be fifty thousand pounds and Ofcom will send the bidder a notice stating the day by which it must transfer to Ofcom the balance of the licence fee. If the bidder does not pay the licence fee by the required time, the bidder will not be granted a licence and will forfeit sums on deposit held by OFCOM (regulation 11(4)).

Under Part 5, where the number of bidders is more than one, OFCOM will give each bidder a notice, setting out the delivery period within which completed bid documentation must be provided to OFCOM (regulation 14). The bid documentation must be completed in accordance with regulations 15 and 16 and sealed bids submitted in accordance with regulation 17. Bidders must also pay to OFCOM a further deposit (regulation 18).

OFCOM will determine the winning bid and the identity of the winning bidder under Part 5 by following the procedure set out in regulation 23. OFCOM will then grant the winning bidder the licence and refund the winning bidder the appropriate sum due under regulation 24(1)(b).

If in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that certain events are occurring or have occurred and the occurrence would materially affect the outcome of the award process the applicant or bidder concerned will forfeit sums on deposit and may be excluded from the award process (regulation 26).

A full regulatory impact assessment of the effect these Regulations will have on the cost to business has been prepared and is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA, telephone 020 7981 3000 or on the OFCOM website at <http://www.ofcom.org.uk>. Copies of the report have also been placed in the libraries of both Houses of Parliament.

# The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007

*Made*        -        -        -        -        14th February 2007

*Coming into force* - - 8th March 2007

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 8th March 2007.

## Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2004

**2. The Wireless Telegraphy (Spectrum Trading) Regulations 2004(b) are amended as follows—**

- (a) in Column 2 of Part 4 of the Schedule insert at the end “1785–1805 MHz”; and
- (b) in Part 5 of the Schedule insert at the end—

“Self Coordinated Links	64–66 GHz
	71.125–75.875 GHz
	81.125–85.875 GHz”.

Ed Richards

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

14th February 2007

(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)*

These Regulations amend the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (S.I.2004/3154) (the “Principal Regulations”).

Regulation 2 of these Regulations amends the Principal Regulations and authorises the transfer of rights and obligations arising by virtue of a wireless telegraphy licence in the Spectrum Access class (regulation 2(a)) and the Self Coordinated Links class (regulation 2(b)) within the frequency bands stated.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from the OFCOM Library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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**2007 No. 381**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) Regulations  
2007**

*Made* - - - - *14th February 2007*

*Coming into force* - - *8th March 2007*

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 8th March 2007.

**Amendment of the Wireless Telegraphy (Register) Regulations 2004**

2.—(1) The Wireless Telegraphy (Register) Regulations 2004(b) are amended in accordance with the following provisions of this regulation.

(2) In regulation 4—

(a) in paragraph (1)—

(i) after “wireless telegraphy licences” insert “or grants of recognised spectrum access”;

(ii) for “relates to the matters set out in paragraph (2)” substitute—

■(a) in respect of a licence or grant of recognised spectrum access of a class specified in Column 1 of Parts 1 to 8 of the Schedule relates to the matters set out in paragraph (2); and

(b) in respect of a licence or grant of recognised spectrum access of a class specified in Column 1 of Part 9 of the Schedule relates to the matters set out in paragraph (3).■;

(b) in paragraph (2)—

(i) in each of sub-paragraphs (a) and (b), after “wireless telegraphy licence” insert “or a grant of recognised spectrum access”;

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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

- (ii) in sub-paragraph (c)—
  - (aa) after “wireless telegraphy licence” insert “or grant of recognised spectrum access”;
  - (bb) in paragraph (i) after “assigned” insert “or recognised”;
  - (cc) in paragraph (ii) after “the geographical area of” insert “reception or”;
- (c) after paragraph (2), add the following paragraph—
  - “(3) The matters are—
    - (a) the equipment which is authorised for use;
    - (b) the technical parameters relating to the antenna, transmitter and receiver; and
    - (c) the power of transmission.”;
- (3) In the Schedule—
  - (a) in the heading, omit “LICENCE”;
  - (b) in Part 1 for the heading in Column 1, “Licence classes” substitute “Classes”;
  - (c) in Parts 2, 3, 5, 6 and 7 for the heading in Column 1, “Licence class” substitute “Class”;
  - (d) in Part 4 for the heading in Column 1, “Licence class”, substitute “Classes”;
  - (e) in Part 4 at the end of Column 2, add—

“1785–1805 MHz”;

- 
- (f) after Part 7, add the following Parts—

**Part 8**

<i>Column 1</i>	<i>Column 2</i>
<b>Class</b>	<b>Frequency bands</b>
Radio Astronomy	37.75–38.25 MHz
	80.5–82.5 MHz
	150.05–152.00 MHz
	606–614 MHz
	1.400–1.427 GHz
	1.6106–1.6138 GHz
	1.6600–1.6605 GHz
	1.6605–1.6680 GHz
	1.668–1.670 GHz
	2.69–2.70 GHz
	10.60–10.68 GHz
	10.68–10.70GHz
	15.35–15.40 GHz
	22.01–22.21GHz
	22.21–22.50 GHz
	22.81–22.86 GHz
	23.07–23.12GHz
	23.6–24.0 GHz
	31.3–31.5 GHz
	31.5–31.8 GHz
	42.5–43.5 GHz
	48.94–49.04 GHz

**Part 9**

<i>Column 1</i>	<i>Column 2</i>
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**Class**  
Self Coordinated Links

**Frequency bands**  
64–66 GHz  
71.125–75.875 GHz  
81.125–85.875 GHz

14th February 2007

*Ed Richards*  
Chief Executive of the Office of Communications  
For and by the authority of the Office of Communications

## **EXPLANATORY NOTE**

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

These Regulations amend the Wireless Telegraphy (Register) Regulations 2004 (S.I. 2004/3155) (the “principal Regulations”), which have been amended on two other occasions (S.I. 2006/340 and S.I. 2006/1808).

The principal Regulations require OFCOM to establish and maintain a public register of relevant information relating to wireless telegraphy licences of certain classes which apply to a station or apparatus operating within certain frequency bands specified in the Schedule to the Principal Regulations. Section 31 of the Wireless Telegraphy Act 2006 (c.36) provides that the making, renewal or transfer of grants of recognised spectrum access is relevant information that may be included on the public register.

Regulation 2 of these Regulations amends regulation 4 of, and the Schedule to, the principal Regulations by expanding the Register to include: grants of recognised spectrum access; setting out the matters to be included for self-coordinated links licences as a new licence class; and providing for a further licence (at frequency band 1785–1805 MHz).

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the assessment have also been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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**2007 No. 379**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - *14th February 2007*

*Coming into force* - - *8th March 2007*

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

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

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007 and shall come into force on 8th March 2007.

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

**Limitation of licences**

**2.**—(1) The following paragraphs of this Order apply to the grant of wireless telegraphy licences for the use of the frequency 1785 megahertz to 1805 megahertz in Northern Ireland.

(2) The persons to whom the wireless telegraphy licences will be granted shall be determined by OFCOM using the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2007(b).

(3) The criteria for determining the number of wireless telegraphy licences to be granted are that the number of wireless telegraphy licences to be granted should be the number which is most likely to secure the optimal use of the electromagnetic spectrum and promote competition in the provision of electronic communication services having regard to the matters set out in section 3(1) and (2) of the Act.

14th February 2007

*Ed Richards*  
Chief Executive of the Office of Communications  
For and by the authority of the Office of Communications

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(a) 2006 c. 36  
(b) S.I. 2007/378

**EXPLANATORY NOTE**

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

This Order is made under section 29 of the Wireless Telegraphy Act 2006 (“the Act”). Section 29 of the Act implements Article 7(1)(c) of the Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ No L 108, 24.4.02, p21). Under section 29(1) of the Act OFCOM may, if they consider it appropriate for the purpose of securing the efficient use of the electromagnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing these limitations.

Article 2(1) of this Order specifies the frequency band for the use of which OFCOM will grant only a limited number of wireless telegraphy licences in Northern Ireland. The licences will be within the licence class known as Spectrum Access.

Article 2(2) sets out how the persons to whom the wireless telegraphy licences are to be granted are to be determined.

Article 2(3) sets out the criteria for determining the number of wireless telegraphy licences to be granted.

A full regulatory impact assessment of the effect that this Order will have on the costs to business is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.

## Annex 2

# Regulatory Impact Assessments

## Regulatory Impact Assessment – the Wireless Telegraphy (Licence Award) Regulations 2007

- A2.1 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”), following Ofcom’s notice of proposals to make the Regulations<sup>6</sup>, published on 14 December 2006 (the “Notice”), and its statement on the Notice consultation<sup>7</sup>.
- A2.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

### Proposal, purpose and intended effect

- A2.3 Following its consultation published on 15 December 2005 (The “December Consultation”) and statement published on 14 December 2006 (the “December Statement”) <sup>8</sup> on the award of the available spectrum: 1785-1805 MHz (the “Spectrum Band”), Ofcom has decided to award a technology neutral licence by means of an auction.
- A2.4 The draft Northern Ireland regulations to which this RIA 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

- A2.5 The draft Northern Ireland 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

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<sup>6</sup> Notice of Ofcom’s proposal to make regulations in connection with the award of 1785-1805 MHz is available at <http://www.ofcom.org.uk/consult/condocs/award1785/award1785.pdf>

<sup>7</sup> Published on 14 December 2006 and available at <http://www.ofcom.org.uk/consult/condocs/availspec/statement/statement.pdf>

<sup>8</sup> The December Consultation and the December Statement are available at [http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_1785/](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1785/)

ComReg published jointly a Consultation and Statement on the award of the Spectrum Band in December 2005 and December 2006 respectively.

- A2.6 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.
- A2.7 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**

- A2.8 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.
- A2.9 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.
- A2.10 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**

- A2.11 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.

A2.12 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

A2.13 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

A2.14 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**

A2.15 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.

A2.16 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.

A2.17 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.

- A2.18 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>9</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.
- A2.19 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

- A2.20 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.
- A2.21 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.
- A2.22 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

- A2.23 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.
- A2.24 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

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<sup>9</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.



require that bidders remain active in each round in order to have the right to bid in the next round<sup>10</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.

A2.25 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.

A2.26 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>11</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**

A2.27 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**

A2.28 The main business sector affected by this proposal is fixed and mobile communications service provision.

A2.29 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

## **Conclusion**

A2.30 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

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<sup>10</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.

<sup>11</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).

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

### **Introduction**

A2.31 The analysis set out in this document represents a Regulatory Impact Assessment ("RIA") following Ofcom's:

- a) notice of proposals to make regulations in connection with the award of 1785-1805 MHz<sup>12</sup>, published on 14 December 2006; and
- b) notice of proposals to make regulations in connection with the creation of a new class of tradable wireless telegraphy licences in the 71-76GHz, 81-86GHz and 64-66 GHz bands<sup>13</sup>, published on 20 December 2006.

A2.32 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. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

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

A2.33 This RIA for the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2007 relates to:

- a) Ofcom's planned grant of a licence to use the available spectrum 1785-1805 MHz<sup>14</sup> band in Northern Ireland (the "Northern Ireland Licence"); and
- b) the creation of a new class of tradable wireless telegraphy licences in the 71-76GHz, 81-86GHz and 64-66 GHz bands ("Self Coordinated Links")<sup>15</sup>.

A2.34 The purpose of these regulations is to permit the transfer of all rights and obligations relating to the licences described above. Ofcom intends that all types of transfers, i.e. outright, concurrent, partial and total transfers will be permitted.

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<sup>12</sup> Notice of Ofcom's proposal to make regulations in connection with the award of 1785-1805 MHz, available at <http://www.ofcom.org.uk/consult/condocs/award1785/award1785.pdf>

<sup>13</sup> Licensing in the 71-76 GHz, 81-86 GHz and 64-66 GHz bands. Notice of Ofcom's proposal to amend the Wireless Telegraphy (Register) Regulations and the Wireless Telegraphy (Spectrum Trading) Regulations, available at <http://www.ofcom.org.uk/consult/condocs/licensing7176/consultation.pdf>

<sup>14</sup> Ofcom's plans are the result of detailed award proposals in December 2005 and a statement in December 2006 ([http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_1785](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1785)) and the consultation and statement on the Notice.

<sup>15</sup> Ofcom published a statement "Making Spectrum Available in the 71 – 76 GHz bands & 81 – 86 GHz Bands" on 8 November 2006, which sets out a light licensed approach for broadband fixed wireless systems. The Statement is at [http://www.ofcom.org.uk/consult/condocs/71-86ghz/statement/71\\_86ghz.pdf](http://www.ofcom.org.uk/consult/condocs/71-86ghz/statement/71_86ghz.pdf) The original consultation can be found at <http://www.ofcom.org.uk/consult/condocs/71-86ghz/71-86.pdf>

## **Costs and benefits to business**

- A2.35 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 generally 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 Northern Ireland Licence and the Self Coordinated Links licence class.
- A2.36 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.
- A2.37 In relation to the Northern Ireland Licence, 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 1785-1805 MHz band.
- A2.38 It is possible that radio microphone and other short range device users could compete for the Northern Ireland Licence or subsequently acquire access to the 1785-1805 MHz band through spectrum trading because the proposals for the award envisage that the 1785-1805 MHz band will be technology and application neutral. This will only be possible, however, provided that a mechanism for managing the 1785-1805MHz 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**

- A2.39 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up and including the 1785-1805 MHz band and the Self Coordinated Links licence class within the framework should require little additional cost.

## **Business sectors affected**

- A2.40 The main business sector affected by this proposal is fixed and mobile communications service provision.
- A2.41 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

## **Conclusion**

- A2.42 Ofcom has assessed the impact of allowing spectrum trading in the 1785-1805 MHz band and for Self Coordinated Links and has found that the costs are likely to outweigh the benefits for all types of transfer.

## **Regulatory Impact Assessment – the Wireless Telegraphy (Register) (Amendment) Regulations 2007**

### **Introduction**

A2.43 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”) following Ofcom’s:

- a) notice of proposals to make Regulations in connection with the award of 1785-1805 MHz<sup>16</sup>, published on 14 December 2006, and its statement on the Notice consultation<sup>17</sup>;
- b) notice of proposals to make regulations in connection with the creation of a new class of tradable wireless telegraphy licences in the 71-76GHz, 81-86GHz and 64-66 GHz bands<sup>18</sup>, published on 20 December 2006 and its statement on the approach with respect to licences in these bands<sup>19</sup>; and
- c) notice of proposals to make regulations in connection with Recognised Spectrum Access (RSA) for radio astronomy<sup>20</sup>, published on 10 November 2006 and consultation and statement on RSA as applied to radio astronomy<sup>21</sup>.

A2.44 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. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

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

A2.45 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 (the “Register”).

A2.46 These Regulations enable information about:

- a) the Northern Ireland licence in the available spectrum 1785-1805 MHz (the “Spectrum Band”);

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<sup>16</sup> Notice of Ofcom’s proposal to make regulations in connection with the award of 1785-1805 MHz, available at <http://www.ofcom.org.uk/consult/condocs/award1785/award1785.pdf>

<sup>17</sup> Published on 14 December 2006 and available at

<http://ofcom.org.uk/consult/condocs/availspectrum/statement/statement.pdf>

<sup>18</sup> Licensing in the 71-76 GHz, 81-86 GHz and 64-66 GHz bands. Notice of Ofcom’s proposal to amend the Wireless Telegraphy (Register) Regulations and the Wireless Telegraphy (Spectrum Trading) Regulations, available at

<http://www.ofcom.org.uk/consult/condocs/licensing7176/consultation.pdf>

<sup>19</sup> The Statement is at [http://www.ofcom.org.uk/consult/condocs/71-86ghz/statement/71\\_86ghz.pdf](http://www.ofcom.org.uk/consult/condocs/71-86ghz/statement/71_86ghz.pdf). The original consultation can be found at <http://www.ofcom.org.uk/consult/condocs/71-86ghz/71-86.pdf>

<sup>20</sup> Notice of Ofcom’s proposal to make regulations in connection Recognised Spectrum Access (RSA) for radio astronomy, available at <http://www.ofcom.org.uk/consult/condocs/rsa/rsa.pdf>

<sup>21</sup> The consultation is at [http://www.ofcom.org.uk/consult/condocs/astronomy/main/radio\\_astronomy.pdf](http://www.ofcom.org.uk/consult/condocs/astronomy/main/radio_astronomy.pdf) and the statement is at <http://www.ofcom.org.uk/consult/condocs/astronomy>

b) tradable wireless telegraphy licences in the 71-76GHz, 81-86GHz and 64-66 GHz bands ("Self Coordinated Links") licences; and

c) grants of RSA for radio astronomy,

to be published in the Register.

A2.47 The amendment to the Register results from Ofcom's planned auction<sup>22</sup> of the Northern Ireland Licence to use the Spectrum Band; the creation of a new class of tradable licences in the 71-76GHz, 81-86GHz and 64-66 GHz bands known as Self Coordinated Links licences; and the introduction of RSA in connection with radio astronomy.

A2.48 These amendments to include additional information on the Register should facilitate further spectrum trading, by providing information which will enable other licensees and potential buyers to find out who holds what frequencies and the constraints on the use of the specific frequencies or bands.

A2.49 It will also facilitate coordination and sharing of bands used for radio astronomy. If the trading of grants of RSA is allowed in the future, it should also be facilitated by publishing this information on the Register.

### **Costs and benefits**

A2.50 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 Northern Ireland licence, Self Coordinated Links licences and grants of RSA in the Register. Ofcom considers that the original RIA is also relevant to the impact assessment for these current regulations.

A2.51 The RIA for the Wireless Telegraphy (Register) Regulations 2004 concluded 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.

A2.52 The costs to Ofcom of updating the Register to add the Northern Ireland licence, Self-Coordinated Links Licences and grants of RSA will be minimal since the Register has already been established and would be maintained regardless of the current regulations. Moreover, if grants of RSA are not added to the Register, other spectrum users may incur greater costs in coordinating with radio astronomy.

### **Business sectors affected**

A2.53 The main sectors affected by this proposal are radio astronomy, and fixed and mobile communications service provision.

A2.54 Other business sectors may benefit from opportunities to access more spectrum as a result of the incentives to promote efficient use of the spectrum allocated to radio astronomy contained in these proposals.

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<sup>22</sup> Ofcom's plans are the result of detailed award proposals in December 2005 and a statement in December 2006 ([http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_1785](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1785)) and the consultation and statement on the Notice..

## Conclusion

- A2.55 Ofcom's assessment is that the benefits of including the Northern Ireland licence and Self Coordinated Links licence classes and grants of RSA for radio astronomy within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits include reduced coordination costs and more trading possibilities to promote efficient use of spectrum.

## Regulatory Impact Assessment – the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2007

### Introduction

- A2.56 The analysis set out in this document represents a Regulatory Impact Assessment ("RIA") following Ofcom's notice of proposals to make the Order<sup>23</sup>, published on 14 December 2006 (the "Notice"), and its statement on the Notice consultation<sup>24</sup>.
- A2.57 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. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

### Proposal, purpose and intended effect

- A2.58 Following its consultation published on 15 December 2005 (the "December Consultation") and statement published on 14 December 2006 (the "December Statement") on the award of available spectrum: 1785-1805 MHz<sup>25</sup> (the "Spectrum Band"), Ofcom has decided to award a technology neutral licence by means of an auction.
- A2.59 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.
- A2.60 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 Wireless Telegraphy (Licence Award) Regulations 2007.

### Costs and benefits

- A2.61 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.
- A2.62 Ofcom is intending to award the Northern Ireland Licence on a technology and application neutral basis, therefore although there may be types of use such as

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<sup>23</sup> Notice of Ofcom's proposal to make regulations in connection with the award of 1785-1805 MHz, available at <http://www.ofcom.org.uk/consult/condocs/award1785/award1785.pdf>

<sup>24</sup> Published on 14 December 2006 and available at <http://www.ofcom.org.uk/consult/condocs/availspec/statement/statement.pdf>

<sup>25</sup> The December Consultation and the December Statement are available at [http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_1785/](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1785/)

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 Northern Ireland Licence for exploitation by Short Range Devices (SRDs), addresses the needs of both types of service without unduly favouring either.

## **Costs to Ofcom**

- A2.63 The costs to Ofcom of limiting the number of licences in the Spectrum Band to one relate mainly to the 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.
- A2.64 In comparison, licence exemption would mean that Ofcom would 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.
- A2.65 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**

- A2.66 The main business sectors affected by this proposal are fixed and mobile communications service provision.
- A2.67 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

## **Conclusion**

- A2.68 Ofcom has assessed the impact of limiting or not limiting the number of licenses 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 co-ordination with other users.