



Statement on the making of regulations in connection with the award of 1452-1492 MHz

Statement

Publication date:

13 March 2008

Contents

Section		Page
1	Summary	1
2	Introduction	3
3	Ofcom's decisions	5
4	General effect of the Wireless Telegraphy (Licence Award) Regulations 2008	8
5	General effect of the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008	20
6	General effect of the Wireless Telegraphy (Register) (Amendment) Regulations 2008	24
7	General effect of the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2008	25
8	Regulatory Impact Assessments	26
9	Next steps	41
Annex		Page
1	Draft statutory instruments	42

Section 1

Summary

- 1.1 This Statement sets out our decisions in relation to the statutory instruments we need to make in connection with the award of wireless telegraphy licences for the use of the 1452-1492 MHz spectrum band (the “Spectrum Band”).
- 1.2 In December 2007 Ofcom published three documents. They were:
- The Information Memorandum¹ on the award of spectrum: 1452-1492 MHz;
 - The Statement² setting out our policy decisions; and
 - Notice³ of our proposal to make regulations in connection with the award of 1452-1492 MHz.
- 1.3 The decisions in those documents were made following the consideration of all of the responses that were made to the various consultations that had been previously carried out.
- 1.4 We have carefully considered the responses that have been made to the Notice and have now made the four statutory instruments and submitted them for registration and publication. They will come into force on 02 April 2008.
- 1.5 We are provisionally indicating in this Statement that we expect the date for receipt of applications to be 10 April 2008. We will confirm the exact date via publication on our website after the statutory instruments have come into force.
- 1.6 The relevant section of our website for information on Ofcom’s spectrum award programme and the award of 1452-1492 MHz is www.ofcom.org.uk/radiocomms/spectrumawards/.
- 1.7 We are making other information relevant to this award available alongside this Statement. This is as follows:
- An explanatory note to accompany Schedule 6 of the Wireless Telegraphy (Licence Award) Regulations 2008. This note is available at: http://www.ofcom.org.uk/radiocomms/spectrumawards/liveawards/award_1452/note.pdf
 - A document setting out various amendments to the Information Memorandum published in December 2007. This document is available at: http://www.ofcom.org.uk/radiocomms/spectrumawards/liveawards/award_1452/im.pdf

¹ See http://www.ofcom.org.uk/radiocomms/spectrumawards/liveawards/award_1452/1452im/

² See http://www.ofcom.org.uk/consult/condocs/1452_1492/statement/

³ See <http://www.ofcom.org.uk/consult/condocs/1452regs/>

- 1.8 We intend to hold a seminar on the auction rules and procedures for this award in March 2008 and there will be training for bidders on use of the electronic auction system before the bidding process begins.

Section 2

Introduction

- 2.1 On 7 December 2007 we published a notice⁴ of our proposal to make regulations (“the December 2007 consultation”) which contained the draft regulations and invited comments on these by 18 January 2008. On the same date we published the Information Memorandum⁵ for this award (the “Information Memorandum”) and a statement⁶ setting out our policy decisions on this band (the “Statement”).
- 2.2 The draft statutory instruments published for consultation in December 2007 followed a number of previous consultations relevant to this award, namely:
- Ofcom’s “Spectrum Framework Review: Implementation Plan”⁷ (SFR: IP) published in January 2005;
 - “Award of available spectrum: 1452-1492 MHz”⁸ published in March 2006 (“the March 2006 consultation”);
 - Two discussion documents published in February 2007, the “Discussion document on the award of available spectrum 1452 – 1492 MHz: Auction design”⁹ (“the auction design discussion document”) and the “Discussion document on the award of available spectrum 1452 – 1492 MHz: Technical aspects”¹⁰ (“the technical discussion document”); and
 - In July 2007 a consultation titled “The award of available spectrum 1452-1492 MHz”¹¹ (“the July 2007 consultation”)
- 2.3 In reaching our decisions we carefully considered the submissions we received to these consultations. A detailed consideration of the responses that we received to those consultations were included in the Statement.
- 2.4 The award of the Spectrum Band is part of a programme of awards that was described in the SFR: IP 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/

Responses to the December 2007 consultation

- 2.5 We did not receive any non-confidential responses. The confidential response that we received did not contain specific comments in relation to the detail of the proposed regulations for this award but made a number of points on the approach that we took when making these regulations. We considered that submission carefully before making our decisions and it is discussed in Section 3 below.

⁴ See <http://www.ofcom.org.uk/consult/condocs/1452regs/>

⁵ See http://www.ofcom.org.uk/radiocomms/spectrumawards/liveawards/award_1452/1452im/

⁶ See http://www.ofcom.org.uk/consult/condocs/1452_1492/statement/

⁷ See <http://www.ofcom.org.uk/consult/condocs/sfrip/sfip/sfr-plan.pdf>

⁸ See <http://www.ofcom.org.uk/consult/condocs/1452-1492/>

⁹ See <http://www.ofcom.org.uk/consult/condocs/1452design/>

¹⁰ See <http://www.ofcom.org.uk/consult/condocs/1452tech/>

¹¹ See http://www.ofcom.org.uk/consult/condocs/1452_1492/

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

- 2.6 Having considered the response to the consultation we decided to make the four statutory instruments relevant to this award on 12 March 2008. These are available on the website of the Office of Public Sector Information (OPSI)¹². 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.
- 2.7 We are also making available other information relevant to this award alongside this Statement. This is as follows:
- An explanatory note to accompany Schedule 6 of the Wireless Telegraphy (Licence Award) Regulations 2008. This note is available at: http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1452/note.pdf
 - A document setting out various amendments to the Information Memorandum published in December 2007. This document is available at: http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1452/im.pdf

Document structure

- 2.8 Section 3 of this Statement provides further details of our decisions following the August consultation.
- 2.9 Sections 4 to 7 describe the general effect of the regulations.
- 2.10 Section 8 contains copies of the Regulatory Impact Assessments for the four statutory instruments in the form placed in the libraries of both Houses of Parliament.
- 2.11 Section 9 describes the next steps for the award.
- 2.12 Annex 1 contains draft copies of the four statutory instruments in the form submitted for registration and publication after they were made.

¹² See <http://www.opsi.gov.uk>

Section 3

Ofcom's decisions

- 3.1 In the December 2007 Consultation we gave notice of, and consulted on, our 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 2008 (the "Licence Award Regulations") set out the process to be followed for the award of licences for use of the Spectrum Band and the rules that will apply to that process.
 - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008 (the "Trading Regulations") provide the scope for subsequent transfers of licences in the Spectrum Band, as described in the August Consultation.
 - The Wireless Telegraphy (Register) (Amendment) Regulations 2008 (the "Register Regulations") 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 2008 (the "Limitation Regulations") sets out how the number of licences in the Spectrum Band will be limited for the time being in accordance with the outcome of the award process.

Responses to the December 2007 consultation

- 3.3 We did not receive any non-confidential responses. The confidential response that we received did not contain specific comments in relation to the detail of the proposed regulations for this award but made a number of points on the approach that we took when making these regulations.
- 3.4 In particular the respondent noted that it did not agree that the arguments in Section 6 of the Statement explaining our view that the award was not discriminatory were credible. It also stated that it did not agree with our assessment of the Information Memorandum for the 2000 3G auction or the surrounding circumstances. However it did not give any reasons for why it held either of those views.
- 3.5 The respondent stated that it considered that we have not properly considered the effect of competition on our decisions. We have considered the competition effects of this award previously, for example in section 6 of the Statement and paragraphs 4.41 to 4.43 of the March 2006 consultation.
- 3.6 The respondent stated that it did not consider that we had provided sufficient justification for our view that existing 3G licence holder are not disadvantaged by the proposed approach is a way that would distort investment incentives and so competition. We explained in the Statement why we did not consider that our proposals did not involve undue discrimination (paragraphs 6.25 to 6.30 of the Statement) and also our views on investment certainty (paragraphs 6.31 to 6.33 in the Statement).

- 3.7 We noted that there was no evidence to suggest that a distortion of competition would take place as a result of this award and that if it did we had ex-post competition powers which we could be used to address anti-competitive behaviours in certain circumstances. We have not seen anything that would make us change our view.
- 3.8 The respondent stated it considered that sufficient clarity must be provided in relation to liberalisation of existing GSM spectrum (at 900MHz and 1800MHz) before any award of spectrum available for any 3G use, although it did not provide any reasons for why it held that view. We have consulted on a range of options for liberalisation of the 2G spectrum¹³ are currently considering the responses and will fully respond to the points raised in due course. However, we do not consider that there are strong linkages between resolution of 2G liberalisation and the award of the 1452-1492MHz spectrum which would justify delaying the award of that spectrum. The conditions for use of the 1452-1492MHz spectrum (e.g. the international restrictions) and its likely uses suggest that the scope for substitutability with the 2G spectrum at 900MHz and 1800MHz is limited.
- 3.9 Finally the respondent stated that it had raised concerns with the auction design in response to previous consultations and that it continued to have concerns over the auction design. We have addressed the points that respondents raised in relation to auction design in Section 4 and Annex 1 of the Statement. We have not seen anything that would lead us to make any changes to the auction design. Issues that have been raised in relation to other consultations will be addressed as part of those consultations.
- 3.10 Having considered that consultation response carefully we see no reason to change our approach to this award as a result of that submission.

Changes made to the drafting of the regulations

- 3.11 Following the publication of the draft regulations we have made some changes to improve the efficiency of the award and to improve clarity of the Licence Award Regulations. Specifically we have made changes to:
- Combine the application information and the application document, that were previously in Schedules 1 and 2 respectively, into one application form in Schedule 1. This was done to reduce the likelihood of applicants not providing all of the required information; and
 - We have changed paragraph 44 of the Award Regulations to make it clear that we will notify the outcome of the award to all bidders at the end of the auction stage. Specifically at the end of the auction stage we will inform all bidders of:
 - the Lot(s) comprised in all Winning Bidders' Winning Auction Stage Bid;
 - the Licence Condition assigned to those Lots;
 - any Unallocated Lots assigned to the Winning Bidders; and
 - the Winning Prices.

¹³ See <http://www.ofcom.org.uk/consult/condocs/liberalisation/>

- We have changed paragraph 48 so that it no longer restricts the publication of the outcome of the award process to after the grant of the licences and the payment of refunds to winning bidders.
- We have removed paragraphs 11(5), (6), (7) and (8) in order to simplify the regulations.
- We have made the related editorial amendments to reflect those changes.

3.12 In addition we have made minor editorial changes to the Regulations, in particular to improve their clarity.

Ofcom's decision

3.13 Having considered the consultation response and made the changes described above we decided to make the four statutory instruments in connection with the award process on 12 March 2008 and they will come into force on 02 April 2008.

Section 4

General effect of the Wireless Telegraphy (Licence Award) Regulations 2008

The legislative framework

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

Extent of application

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

The regulations

- 4.3 The regulations set out the procedure and rules that will apply for the award of licences to operate within the Band. The award process includes an application stage, a qualification stage and two alternative procedures for the award of licences, where the procedure to be followed depends on the number of bidders. The regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process

Application stage

- 4.4 The application stage is described in detail at Part 2 of the regulations. Any body corporate wishing to participate in the award process must submit an application containing the application information required by the regulations.
- 4.5 The application information includes details of all members of the applicant’s bidder group, which is defined in the regulations as including the applicant, each associate of the applicant and any person in respect of whom the applicant or bidder has delivered to Ofcom a completed form as set out in Schedule 2 to the regulations. Applicants are also required to provide Ofcom with details of any circumstances relevant to Ofcom’s determination of the applicant’s qualification to bid (including details of all exchanges of confidential information by the applicant to a party other than Ofcom or a member of its bidder group). The date and time for submission of applications will be published on the Ofcom website.
- 4.6 The application must include the information and a statement in the form provided for in Schedule 1 of the regulations. The application requires an applicant to certify, amongst other things that:
- it has the legal authority to participate in the auction and to be granted a licence;
 - the information provided in its application is true, accurate and complete; and
 - it is aware of the provisions relating to disclosure of confidential information.

- 4.7 In addition applicants must also submit documents in the form provided for in Schedule 2 of the regulations for each person who is not an associate of the applicant but who the applicant wishes to make a member of its bidder group (for example advisers with whom the applicant wishes to exchange confidential information).
- 4.8 The term “associate” is defined in the regulations as meaning any person who has a material interest in an applicant or bidder, where the term ‘material interest’ is also defined in the regulations.
- 4.9 “Confidential information” is defined in the regulations as any information in relation to an applicant or bidder which is not in the public domain, but which if it were made public or disclosed to another applicant, potential applicant, bidder or member of another bidder group, would be likely to affect decisions that an applicant, potential applicant or bidder may make in relation to the award process.
- 4.10 Finally, the application must be accompanied by an initial deposit of £50,000. Such initial deposits will not earn interest and will only be refunded in the circumstances set out in the regulations.

Qualification stage

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

such information within the specified time will also be taken into account by Ofcom when determining which applicants qualify to bid in the auction.

- 4.16 Ofcom will notify each applicant of whether it has qualified to bid in the auction (giving reasons where an applicant has not qualified). Ofcom will publish the identity of all applicants who are qualified to bid in the auction on its website.
- 4.17 Ofcom will notify each applicant qualified to bid of the last day on which they may withdraw from the award process.
- 4.18 Applicants wishing to withdraw from the award process before this last day for withdrawal may do so by notice in writing to Ofcom, signed by at least two authorised persons (being persons identified on the application form as authorised to bind the applicant and in respect of whom specimen signatures were provided). Ofcom will notify all other applicants of any such withdrawal. Applicants who withdraw in this way will receive a refund of their initial deposit (unless the deposit has been forfeited in accordance with the activity rules set out at Part 6 of the regulations) but not any interest which has accrued, and they shall not be re-admitted to the award process.
- 4.19 Applicants who do not withdraw before the last day for withdrawal are known as bidders and Ofcom will publish the names of all bidders on its website, along with a statement saying which of the two alternative procedures set out in the regulations is to be followed for the award of the licences. Ofcom will grant a licence, or licences in accordance with the procedure in Part 4 of the regulations if there is only one bidder, or in accordance with the procedure in Part 5 of the regulations if there is more than one bidder.

Procedure where there is only one bidder

- 4.20 Part 4 of the regulations sets out the procedure to be followed where there is only one bidder. The bidder must complete a lot selection menu, which will list the lots that are available to the bidder. Ofcom will send the bidder a notice stating the day and time by which the bidder must return its completed lot selection menu and pay to Ofcom the appropriate sum as a licence fee.
- 4.21 The bidder must complete the lot selection menu by selecting at least one of the lots and nominating a licence condition. The lot selection menu must be signed by two authorised persons of the bidder and returned to Ofcom by the time specified in the notice.
- 4.22 The licence fee will be the total of the prices per lot (as indicated on the lot selection menu) for each lot selected by the bidder.
- 4.23 The sum which the bidder must pay to Ofcom will be the appropriate licence fee less the initial deposit, unless the initial deposit has already been forfeited, in which case the full licence fee shall be payable. Ofcom will grant the bidder a licence for the lots selected on the lot selection menu once it has received payment of the appropriate licence fee.
- 4.24 Following the grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee, the lots in respect of which the licence was granted and the total licence fee paid. Ofcom will also refund initial deposits (without any interest having accrued) to applicants who were not qualified or withdrew before the last day for withdrawal, unless such initial deposits have already been forfeited in accordance with the regulations.

Auction stage – more than one bidder

4.25 Part 5 of the regulations sets out the procedure to be followed where, following the last day for withdrawal, there is more than one bidder. Part 5 is split into six chapters as follows:

- chapter 1 gives an overview of the auction stage of the award process;
- chapter 2 explains the primary and supplementary bids;
- chapter 3 sets out the procedure for primary bid rounds;
- chapter 4 sets out the procedure for supplementary bids round and the requirement for the final auction stage deposit;
- chapter 5 details the determination of the winning auction stage bids and conclusion of the auction stage; and
- chapter 6 details the grant stage of the auction.

4.26 Regulation 14 provides that where there is more than one bidder the award process consists of the auction stage. It explains that during the auction stage bids may be made for ‘lots’.

4.27 Regulation 14(3) of the regulations explains that during the auction stage there will be one or more rounds for the submission of primary bids (“primary bid rounds”) and one further round for the submission of supplementary bids (“supplementary bids round”).

4.28 Regulation 14 (4) of the regulations sets out the lots available as follows:

Lot	Frequency range (MHz)
LA	1452.000-1453.816
LB	1453.816-1455.528
LC	1455.528-1457.240
LD	1457.240-1458.952
LE	1458.952-1460.664
LF	1460.664-1462.376
LG	1462.376-1464.088
LH	1464.088-1465.800
LI	1465.800-1467.512
LJ	1467.512-1469.224
LK	1469.224-1470.936
LL	1470.936-1472.648

Lot	Frequency range (MHz)
LM	1472.648-1474.360
LN	1474.360-1476.072
LO	1476.072-1477.784
LP	1477.784-1479.500
LQ	1479.500-1492.000

- 4.29 A bid made during a primary bid round is a bid for a selection of lots at an amount (in whole pounds) which will be the total amount of the round prices in that primary bid round for the selection of lots and for which the bidder has chosen a "licence condition". A "licence condition" means either
- a) the "high power licence condition" which does not limit the maximum power of individual transmitters but limits their maximum density; or
 - b) the "low power licence condition" which limits the maximum power of individual transmitters but does not limit their maximum density.
- 4.30 In order to make a primary bid the bidder must use a form provided by Ofcom ("primary bid form"). The selection of lots in the primary bid must be such that the total of the eligibility points associated with the lots in accordance with Schedule 5 does not exceed the bidder's eligibility limit for that round and a bidder may not submit more than one primary bid in a primary bid round.
- 4.31 The minimum participation requirement is that a bidder must submit a valid primary bid in the first primary bid round. Any bidder which does not meet the minimum participation requirement will be excluded from the award process and will not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 23 which will be forfeited (unless already forfeited under regulation 49 of the regulations).
- 4.32 Following the primary bid rounds, a supplementary bids round will occur. A bid made during the supplementary bids round ("supplementary bid") will be a bid for a selection of lots at an amount (in whole pounds) which the bidder will determine (subject to the requirements of regulation 26 of the regulations) and for which the bidder has chosen a licence condition. The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in the primary bids made by that bidder. A bidder cannot submit more than two thousand supplementary bids. A bidder will not be able to submit more than two supplementary bids for each particular selection of lots. Where a bidder submits two supplementary bids for a particular selection of lots each of those supplementary bids must contain a different licence condition choice.
- 4.33 Regulation 18 of the regulations explains how the number of primary bid rounds is determined. Where the combination of all bids received in a primary bid round is not a "compatible combination of bids", then there will be another primary bid round.
- 4.34 "Compatible combination of bids" means any combination of valid auction stage bids where:

- the combination includes at most one bid from any one bidder;
 - each lot is selected in no more than one bid; and
 - any two bids within the combination contain a different choice of licence condition, the frequencies which are comprised within at least two lots which are not selected in any bid within the combination separate the lots selected in the two bids where the different licence conditions have been chosen.
- 4.35 Where the combination of all bids received in a primary bid round is a compatible combination of bids then there will be no further primary bid rounds and there will be a supplementary bids round. Regulation 18 also gives Ofcom the ability, in specified circumstances, to move straight to the supplementary bids round without having further primary bid rounds even though the combination of all bids received in the last primary bid round is not a compatible combination of bids.
- 4.36 In the first primary bid round, the round price per lot for each lot is set out in Schedule 4 of the regulations. In subsequent primary bid rounds the round price for a lot will increase either:
- where there is more than one bid for that lot; or
 - where there is only one bid for that lot and for one of the adjacent lots and those bids are for different licence conditions; or
 - where there is only one bid for that lot, there is no bid on a lot next to it, but there is one bid for the lot next to that and the two bids are for different licence conditions.
- The round price for a lot will not be more than twice the amount of the round price for that lot in the previous primary bid round.
- 4.37 Regulation 20 provides that for each primary bid round Ofcom will determine an eligibility limit for each bidder.
- 4.38 Regulation 21 sets out how the eligibility limit attributed to each bidder in the first primary bid round is calculated. For the first primary bid round the eligibility limit will be a number equal to the total amount the bidder has on deposit (including the initial deposit and any additional sum that the bidder chooses to pay by way of deposit under regulation 23) divided by 50,000. If the resulting number is a fraction then this will be rounded down to the nearest whole number. In any case the eligibility limit will not be more than 19.
- 4.39 Regulation 22 explains that in subsequent primary bid rounds when a bidder makes a valid primary round bid Ofcom will determine the eligibility limit for the next primary bid round bid, by calculating the number of eligibility points associated with the valid primary. The eligibility limit will be equal to the number of eligibility points associated with the lots in the valid primary round bid in accordance with Schedule 5 to the Regulations. If a bidder does not make a valid primary bid then its eligibility limit will be zero for any subsequent primary bid round.
- 4.40 To be a 'valid primary bid', and therefore taken into account when determining the number of primary bid rounds, the round prices for primary bid rounds, the winning combination of auction stage bids and the price to be paid for those winning bids, a

primary bid must satisfy conditions which are set out in regulation 24 of the regulations. These conditions are that:

- it must be made on a correctly completed primary bid form provided by Ofcom;
- the bid is the only primary bid submitted by the bidder in that primary bid round;
- the selection of lots in the primary bid must be such that the total of the eligibility points associated with the selection of lots in accordance with Schedule 5 does not exceed the bidder's eligibility limit for that round;
- it must be submitted using the electronic auction system (or an alternative method, as provided for in regulation 29); and
- it must be submitted by the end of round time.

4.41 Regulation 25 of the regulations sets out the conditions which supplementary bids must satisfy in order to be 'valid'. These conditions are that:

- a bid must be made on a correctly completed supplementary bids form supplied by Ofcom;
- the amount of the supplementary bid must satisfy certain requirements set out in regulation 26;
- a bidder can submit no more than two supplementary bid for each particular selection of lots; and
- the completed supplementary bids form must be submitted using the electronic auction system (or an alternative method, as provided for in regulation 36) and received by the time notified by Ofcom (or during an extension period, as provided for in regulation 37).

4.42 The requirements on the amount of the supplementary bid are that

- it must not be less than the total amount of the round prices in the first primary round for the selection of lots comprised in the supplementary bid.
- if the supplementary bid is for a selection of lots for which the bidder also made a primary round bid and the licence condition chosen is the same in both bids, then the supplementary bid amount must be greater than the highest amount which that bidder made for that selection in a primary bid round where the licence condition chosen is the same; and
- if a bidder did not make a valid primary bid in the final primary bid round, or the total number of eligibility points associated with the selection of lots in the supplementary bid exceeds the total number of eligibility points associated with the selection of lots in the valid primary bid that the bidder made in the final primary bid round, the supplementary bid must not exceed the total of the round prices for the lots selected in the latest primary round in which the bidder had sufficient eligibility points to bid for that selection of lots.

Procedure for primary bid rounds

- 4.43 Prior to the start of each primary bid round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make primary bids, the round price for each lot and the eligibility limit of the bidder for the primary bid round as determined in accordance with regulation 21 or 22. There are provisions for extensions of up to 30 minutes to the time by which bidders must make their primary bids.
- 4.44 The bidder must submit the completed primary bid form to Ofcom using the electronic auction system by the time specified for the end of the round.
- 4.45 If a bidder is unable to submit a primary bid using the electronic auction system there is provision to submit a completed primary bid form by means of an alternative method, subject to certain conditions that are set out in regulation 29.
- 4.46 Where any primary bid form is incomplete or defective but Ofcom believes that it can ascertain the intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the primary bid form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct, the primary bid form will not be taken into consideration for the purposes of determining the number of primary bid rounds, the round prices for primary bid rounds, the winning combination of auction stage bids, or the winning price payable by a winning bidder.
- 4.47 If a bidder submits a primary bid which is not valid, Ofcom will, after the end of the primary bid round, notify the bidder and will explain why it is not valid.
- 4.48 After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there are no further primary bid rounds), Ofcom will notify bidders of the total demand for each lot and the total demand for each licence condition for each lot.
- 4.49 Regulation 33 of the regulations provides for Ofcom to notify to a bidder that they are required to pay a further sum in pounds as a deposit during the primary bid rounds. The further sum required from a bidder will be an amount such that the bidder's total amount on deposit (subject to any amount forfeited) is not less than the amount of the highest valid primary bid that the bidder made before Ofcom issued the notification. If a bidder fails to comply with the Ofcom notification then their eligibility limit in any further primary bid rounds will be zero.

Procedure for supplementary bids round and final auction stage deposit

- 4.50 Prior to the start of the supplementary bids round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make supplementary bids and the date and times on that date when bidders must make a further deposit in accordance with regulation 40 of the regulations.
- 4.51 The bidder must submit the completed supplementary bids form to Ofcom using the electronic auction system by the time specified by Ofcom.
- 4.52 If a bidder is unable to submit a completed supplementary bid form using the electronic auction system, regulation 36 makes provision for the bidder to submit a

completed supplementary bids form by means of an alternative method, subject to certain conditions.

- 4.53 If Ofcom have not received a completed supplementary bids form by the time notified by Ofcom as the end of the supplementary bids round then Ofcom will allow an additional time of sixty minutes for receipt of the completed supplementary bids form where Ofcom is satisfied that there were circumstances beyond the bidder's control that meant they needed the extension.
- 4.54 Where a supplementary bids form is incomplete or defective but Ofcom believes that it can ascertain the intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the supplementary bids form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct, then if the incompleteness or defect relates to the entire form then all of the bids on the form will be rejected, and if the incompleteness or defect relates to just one or some of the bids on the form then only those bids will be rejected. Rejected bids will not be taken into consideration for the purposes of determining the winning combination of auction stage bids or the price payable by a winning auction stage bidder.
- 4.55 If a bidder submits a supplementary bid which is not valid, Ofcom will, after the end of the supplementary bids round, notify the bidder and will explain why it is not valid.
- 4.56 Under regulation 40 each bidder, by a deadline specified by Ofcom, must pay into Ofcom's bank account a further sum so that the bidder has on deposit a total amount which is not less than the bidder's highest valid primary bid or the bidder's highest valid supplementary bid (whichever is the higher). Where a bidder fails to comply with regulation 40 Ofcom will notify the bidder and that bidder will be excluded from the award process, will not receive a refund of its initial deposit or any other subsequent deposits. In addition, all of its primary bids and any supplementary bids will be deemed invalid and will not be taken into consideration for the purposes of determining the winning combination of auction stages bids nor the price payable by a winning auction stage bidder.

Determination of winning auction stage bids and conclusion of auction stage

- 4.57 Following the end of the supplementary bids round, Ofcom will determine the winning auction stage bids. The winning auction stage bids will be the valid auction stage bids that comprise the winning combination of auction stage bids. The winning combination of auction stage bids will be the compatible combination of bids having the highest total value of amounts bid.
- 4.58 Where there is more than one compatible combination of bids which results in the highest total value, the winning combination of auction stage bids will be that compatible combination of bids which has the highest total number of eligibility points associated with it. Ofcom will determine the winning combination of auction stage bids by employing a method of random selection where there is more than one compatible combination of bids with the highest total value and the highest number of eligibility points associated with it.
- 4.59 Where the winning combination of auction stage bids results in only two adjoining unallocated lots being situated between lots selected in winning auction stage bids with different choices of licence conditions, each of the winning bidders for those winning auction stage bids will be assigned the unallocated lot adjacent to the lot

selected in their winning auction stage bid. A winning bidder's choice of licence condition will not apply to any unallocated lots assigned to it. Otherwise, where there are unallocated lots they will not be assigned through this award process.

- 4.60 Ofcom will determine the winning price for each winning auction stage bid in accordance with Schedule 6.
- 4.61 Following determination of the winning auction stage bids and the winning combination of auction stage bids, and determination of the winning prices, Ofcom will notify each auction stage bidder of:
- the names of the winning bidders; and
 - for each winning bidder
 - the lots in its winning auction stage bid;
 - the licence condition which will be included in the licence for those lots;
 - any unallocated lots that it has been assigned; and
 - the winning price for that winning auction stage bid.

Grant of licences

- 4.62 Regulation 45 provides that the licence fee payable by a winning auction stage bidder will be the winning price for that winning auction stage bid.
- 4.63 Regulation 46 of the regulations sets out the procedure where the amount of the winning bidder's deposit is less than the amount of the licence fee. Ofcom will notify the bidder of the date and time by which it must remit to Ofcom a sum equal to the difference between the licence fee and the amount of the bidder's deposit. Where the bidder pays this sum, Ofcom will grant the bidder a licence for the selection of lots contained in the bidder's winning auction stage bid at the licence condition nominated in that winning auction stage bid and any unallocated lots assigned to the bidder. If the bidder does not pay the required sum, then it will not be entitled to the grant of a licence or receive a refund of any of its deposit.
- 4.64 Regulation 47 of the regulations sets out the procedure where the amount of the bidder's deposit is greater than or equal to the licence fee. Ofcom will grant the bidder a licence for the selection of lots contained in the bidder's winning auction stage bid at the licence condition nominated in that winning auction stage bid and any unallocated lots assigned to the bidder. Ofcom will refund to the winning auction stage bidder the difference (if any) between the amount of the bidder's deposit and the licence fee.
- 4.65 Ofcom will complete the award process by publishing the details of all valid auction stage bids made by each bidder, the names of the persons to whom the licences were granted, the selection of lots included in those licences, the licence condition assigned to those licences and the details of the licence fees paid and by refunding deposits to losing bidders, and applicants who did not qualify or who withdrew.

Activity rules

- 4.66 Part 6 of regulations sets out the activity rules that apply to applicants which have qualified to bid and to bidders. Regulation 49 provides that where Ofcom are satisfied that any of the events set out in regulation 51 have occurred, or are occurring, and that occurrence would materially affect the outcome of the award process, the bidder or applicant concerned will forfeit all of the sums that it has paid as deposit to Ofcom. In such circumstances regulation 49 (b) of the regulations sets out that the bidder may also be excluded from the award process by Ofcom giving that applicant or bidder written notice.
- 4.67 Regulation 50 provides that where a bidder has been excluded from the award process during the auction stage, then all of that bidder's primary and supplementary bids will be deemed invalid and not taken into account for the purposes of determining the winning combination of auction stage bids or the winning price payable by a winning bidder.
- 4.68 Regulation 51 of the regulations sets out the details of the events referred to in regulation 49. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group to distort the award process in any way, disclosure of confidential information to someone who is not a member of the bidder group (subject to certain exceptions) or changes occurring in the membership of the bidder group, except as provided for in regulation 51 (i) of the regulations.
- 4.69 With regard to changes occurring in the membership of a bidder group, regulation 51 (i) provides that changes occurring as a result of a person ceasing to be a member of the bidder group are not breaches of the activity rules. Also, bidders and applicants are able to add members to their bidder groups under the procedure set out at regulation 6. However, the addition of associates is only permitted as a result of merger and acquisition activity where such activity is for a purpose not related to the award process. Also, a change which leads to a member of a bidder's bidder group also becoming a member of another bidder's bidder group will be a breach of the activity rules and may lead to the exclusion of either or both bidders concerned and the forfeiture of deposits.

Miscellaneous

- 4.70 Part 7 of the regulations sets out other miscellaneous provisions, including a general power of exclusion where Ofcom determines in its opinion that the grant of a licence to a bidder would be prejudicial to the interests of national security or where the bidder is not a fit and proper person to hold a licence.
- 4.71 Regulation 53 of the regulations provides details of Ofcom's contact details for the purposes of receiving any notification from a bidder or applicant in accordance with the award process. It also states that notifications to Ofcom in accordance with the regulations may be made by fax, personal delivery or email.
- 4.72 Regulation 54 of the regulations enables Ofcom to alter the deadline or location specified in relation to the delivery of any documents or for completion of any action in relation to the award process, where it would be impractical for such delivery or action to take place at the locations or by or within the deadlines originally specified.
- 4.73 Regulation 55 of the regulations provides that where it would be impracticable to start or end a round at the times notified to bidders, or to use the electronic auction

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

- 4.74 Regulation 56 of the regulations provides that where an auction round is in progress and Ofcom determine that it is not possible to continue the round due to technical failure (or an event with similar effect) Ofcom will take all reasonable steps to notify bidders of its determination, disregard bids made in that round and resume the award procedure from the end of the previous auction round (or, if there was no previous round, the start of the first primary bid round).
- 4.75 If it is not possible to continue the award process as set out in Part 5 of the regulations due to technical failure (or an event with similar effect) Ofcom will determine whether it is necessary, in order to secure a fair and efficient outcome to the award process, to disregard bids made in one or more rounds of the auction and resume the award procedure from the end of the latest round for which bids are not disregarded, or to resume from the start of the first primary bid round.
- 4.76 Regulation 57 of the regulations provides Ofcom with a general discretion to refund, as it sees fit, any sums paid to it in accordance with any provision of the regulations.

Section 5

General effect of the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008

The legislative framework

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

The existing 2004 Regulations on spectrum trading

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

Total and partial transfers under the 2004 Regulations

- 5.7 Regulation 4(1) of the 2004 Regulations authorises the transfer of all rights and obligations arising by virtue of the wireless telegraphy licences of the classes listed in Column 1 of each Part of the Schedule which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part.
- 5.8 Regulation 6(a)(i) to (iv) of the 2004 Regulations authorises the transfer of rights and obligations relating to parts of the licensed range of frequencies for a number of licences.
- 5.9 Under the 2004 Regulations two types of transfer are authorised by regulation 4(1) and regulation 6 (regardless of whether the transfer is “total” or “partial”).

- 5.10 Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer (“outright transfer”).
- 5.11 Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer (“concurrent transfer”).
- 5.12 Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that traded the spectrum) no longer has any rights to use the traded spectrum.
- 5.13 Concurrent transfers, on the other hand, enable licensees to share rights to use spectrum as they see fit over a period of time without the need to undertake further transfers between themselves to effect that sharing.
- 5.14 Section 30(2)(a) to (c) of the Act determine the sorts of transfers which Ofcom may authorise in the regulations. To be sure to permit the maximum possible types of transfer Ofcom decided to mirror in the 2004 Regulations the wording used in that section.
- 5.15 The concept of concurrent licence holding was new to the system of UK wireless telegraphy licensing. Under such a holding each of the concurrent licensees will jointly hold the same rights and obligations under a licence.

Circumstances where transfers are not authorised under the 2004 Regulations

- 5.16 Regulations 4(1) and 6 of the 2004 Regulations which authorise transfers are both subject to regulation 7. Regulation 7 sets out particular circumstances in which transfers are not authorised.
- 5.17 These are:
- where the licence holder (or all of the concurrent holders) and the transferee have not consented to the transfer;
 - where licence fees are outstanding or where the licence holder has opted to pay Ofcom its licence fee by instalments. In the latter situation, the licensee could pay up its outstanding instalments under a licence and then approach Ofcom with a proposed transfer; and
 - where Ofcom has served notice under section 1E(1) of the Wireless Telegraphy Act 1949 of a proposal to revoke or vary the licence. That notice is served around two months prior to the final revocation decision. In the case of a notice concerning a licence variation this will not in fact be an obstacle to trade because if the licensee consents to the variation being made and, if that happened, the licence amendment would be implemented quickly.
- 5.18 Finally, a transfer is not authorised where Ofcom has not consented to it being made.

Notification of a trade under the 2004 Regulations

- 5.19 Once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 8(1) of the 2004 Regulations). Once all the information is provided, Ofcom will check the documentation in order to

ensure that the mandatory information requirements have been met and that the proposed transfer is consistent with the information held by Ofcom. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 8(2) of the 2004 Regulations).

Giving consent to a trade under the 2004 Regulations

5.20 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 10 of the 2004 Regulations) take into account the following factors:

- whether the holder (or concurrent holders) of the licence is/are in breach of the terms of the licence.
- whether the transferee (and the transferor in the case of a partial transfer) is able to meet the terms of the licence.
- whether the transferee is able to meet any criteria in relation to the persons to whom a wireless telegraphy licence may be granted.
- whether it is requisite or expedient for Ofcom to refuse consent because Ofcom has to meet national security concerns, comply with European Community or international obligations or a direction by the Secretary of State.

5.21 In some circumstances Ofcom may be able to consent to a transfer but give a direction to the parties to the trade that the transfer will only be put into effect when certain of the above matters are resolved. This is permitted by regulation 11 of the 2004 Regulations.

Enacting the transfer under the 2004 Regulations

5.22 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.

5.23 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee (Regulation 8(5) of the 2004 Regulations).

5.24 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed and the public register, as described in the Trading Regulations, to ensure that the new licence holdings are reflected.

The amendments to the 2004 Regulations in the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008 (the “amending regulations”)

5.25 The amending regulations would amend the 2004 Regulations to permit all types of transfers (described in the 2004 Regulations) of wireless telegraphy licences of the class Spectrum Access for the frequencies 1452-1492 MHz. These include:

- outright total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) are transferred in entirety from one party to another;

- concurrent total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
 - outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
 - concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s)
- 5.26 The circumstances where transfers are not authorised and the existing rules in the 2004 Regulations on the process for notification, consent and enactment of transfers described above, shall apply to transfers of these licences.

Section 6

General effect of the Wireless Telegraphy (Register) (Amendment) Regulations 2008

The legislative framework and the existing regulations

- 6.1 Under section 31(1) of the Wireless Telegraphy Act 2006 Ofcom may make, by regulations, provision for the establishment and maintenance of a wireless telegraphy register. Under section 31(2) of the 2006 Act Ofcom may only include relevant information in the register if it is information of a description prescribed by regulations.
- 6.2 The regulations amend the Wireless Telegraphy (Register) Regulations 2004 (SI 2004/3155) (the “2004 Regulations”) which provided that Ofcom shall establish and maintain a register of relevant information and prescribed the relevant information.
- 6.3 The 2004 Regulations are available on the website www.opsi.gov.uk.
- 6.4 Ofcom’s notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at www.ofcom.org.uk.

The amendments to the 2004 regulations in the Wireless Telegraphy (Register) (Amendment) Regulations 2008

- 6.5 A draft of the regulations is set out at Annex 1. The regulations add a category of licences (those to be awarded at auction under the Wireless Telegraphy (Licence Award) Regulations 2008) for which information will be published on the register.
- 6.6 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns.

Section 7

General effect of the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2008

The legislative framework

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

The regulations

- 7.4 A draft of the order is set out at Annex 1.
- 7.5 In relation to the award of licences in the licence class Spectrum Access for the frequencies, 1452-1492 MHz, Ofcom will grant a limited number of licences, depending on the outcome of the award process to be held under the Wireless Telegraphy (Licence Award) Regulations 2008 (see sections 2 and 3 of this Notice for more information on the award process).
- 7.6 The order consequently provides that Ofcom will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedures set out in the Wireless Telegraphy Licence (Licence Award) Regulations 2008. The order has been made and will enter into force at the same time as the Wireless Telegraphy Licence (Licence Award) Regulations 2008.

Section 8

Regulatory Impact Assessments

Introduction

- 8.1 In accordance with government practice, where a statutory regulation is proposed, a Regulatory Impact Assessment (RIA) must be undertaken. The analysis presented in this Annex represents a Regulatory Impact assessment, as defined in section 7 of the Communications Act 2003 (the “2003 Act”).
- 8.2 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 policymaking. This is reflected in section 7 of the 2003 Act, which means that generally we will carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. In accordance with section 7 of the 2003 Act, in producing this RIA, we have had regard to such general guidance as it considers appropriate including related to Cabinet Office guidance. For further information about our approach to impact assessments, see the guidelines, “Better policy-making: Ofcom’s approach to impact assessment”, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

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

The issue being considered and the citizen/ consumer interest

- 8.3 This impact assessment concerns the award of the 1452-1492 MHz band of spectrum, including different options for packaging the spectrum and the design of the awards process. This band could potentially be used to support a wide variety of end uses, a number of which could have the potential to create substantial benefits for citizens/ consumers. As we set out previously in our spectrum framework review documents, our view is that in general, citizen and consumer interests in relation to the allocation of spectrum are best served through leaving decisions about spectrum use to the market.

The policy objective

- 8.4 We have a principal duty to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate, by promoting competition. Further, in securing these principal duties we are required to secure the optimal use for wireless telegraphy of the electro-magnetic spectrum¹⁴. Therefore, the objective of the policy is to award the available spectrum in such a way as to maximum the likelihood that it will secure optimal use of the spectrum.

¹⁴ Ofcom’s duties relevant to the award of this spectrum are set out in detail in Section 3 of the March 2006 consultation.

Identification and assessment of options and the impacts on stakeholders

Licence exemption

8.5 Ofcom could allocate this spectrum on a licence exempt basis or with licences. The options are considered in the table below.

Option	Advantages	Disadvantages
Licensed spectrum	Reduced risk of interference means that different operators will have the confidence to invest in deploying services in this spectrum	Higher costs of allocating and administering the spectrum.
Licence exempt spectrum	Notwithstanding potential interference, many service providers could exploit the spectrum and innovative uses might develop.	Given the potential uses of this spectrum, deployment of most of these technologies is likely to lead to significant interference. The high probability of interference is likely to depress the value that can be generated from licence exempt use of this spectrum

Choice of assignment mechanism

8.6 Ofcom could allocate this spectrum in a variety of ways that can be grouped in three ways, auction, “first come, first served” and comparative selection. The options are considered below

Option	Advantages	Disadvantages
Auction	Clear and simple criteria for identifying winning bids Open, transparent, and non-discriminatory Most likely to lead to an efficient outcome	Transaction and participation cost may be incurred by bidders
Comparative selection		Involves defining selection criteria and assessing candidates’ submissions and so carries the risk of subjective judgements being made and of the spectrum not being awarded to the applicant able to use it to maximum advantage.
“First come, first served”		Appropriate where supply exceeds demand. In this case the market assessment suggests that this will not be the case

Technology and service neutrality

8.7 This spectrum could be awarded on either a technology and service neutral basis or it could be mandated for a particular technology or service. These options are considered in the table below.

Option	Advantages	Disadvantages
Technology and service neutral approach	<p>The market is allowed to determine the optimum use of the spectrum</p> <p>The potential efficiency of the auction is maximised by allowing bidders the option of using the technology and service that they prefer</p> <p>Demand assessment suggests that a range of different technologies and services wish to use this spectrum, this approach allows the market to choose the best use</p> <p>Consistent with the framework directive</p> <p>Does not constrain future use</p>	<p>Bidders in auction face uncertainty over nature of adjacent users (although risks can be mitigated by defining appropriate spectrum usage rights)</p>
Mandate a specific service or technology	<p>Bidders have certainty over nature of adjacent spectrum users</p> <p>In certain circumstances, may assist in facilitating international harmonisation of equipment (though this can also be achieved by less intrusive means).</p>	<p>Requires Ofcom to choose one or more technologies or services</p> <p>Could result in a sub optimal choice of technology or services</p> <p>Could exclude technologies or services that may provide greater benefits than the chosen technologies or services</p>

Packaging options

8.8 Given the varying constraints on the use of different parts of this band. Ofcom has looked at the packaging options for two different sub-bands, namely:

- Lower 27.5MHz (1452 – 1479.5MHz)
- Upper 12.5MHz (1479.5 – 1492MHz)

Overview of packaging options for lower 27.5 MHz

8.9 Ofcom has identified and assessed four possible packaging options for the lower 27.5 MHz. The table below gives an overview of these packaging options, together with their respective advantages and disadvantages.

Option	Advantages	Disadvantages
Option A: package in 1.7 MHz lots	<p>Promotes competition</p> <p>Different interference constraints between lots are made explicit</p> <p>Market can determine optimum aggregation</p> <p>Maximum accommodation of alternative uses</p>	<p>Aggregation risk for users requiring larger amounts of spectrum (<i>may be mitigated through appropriate auction design</i>)</p> <p>Sub-optimal outcomes would need to be resolved in the secondary market</p> <p>Larger number of lots tend to add complexity to the award process</p>
Option B: package in 5.1 MHz lots	<p>Removes aggregation risk for users requiring (multiple of) 5.1 MHz lots</p> <p>Less complex award process (fewer lots)</p>	<p>Unsatisfactory for users not seeking (multiples of) 5.1 MHz. These users would need to rely on secondary trading which may involve high transaction costs</p> <p>Risk of regulatory failure through picking the sub-optimal package size</p> <p>Potentially inconsistent with approach of technology neutrality, as choice of package size may favour certain technologies</p>
Option C: package in varied-sized lots	<p>May remove aggregation risks for users requiring particular amounts of spectrum</p> <p>Potentially allows a greater variety of uses (than options B and D) and reduced aggregation risk than option A</p>	<p>Larger number of lots tend to add complexity to the award process though this can be mitigated through the auction design</p>
Option D: package in one 27.5 MHz lot	<p>Quick and simple award process</p> <p>Minimal involvement from Ofcom</p>	<p>Spectrum may be allocated inefficiently and relies on an efficient secondary market (which at present is unlikely)</p> <p>Potentially restricts the development of competition and variety of applications</p>

Award options for the upper 12.5 MHz

8.10 In light of the international constraints that have been identified there are three broad options available for awarding the upper 12.5 MHz block:

- Award it through a pan-European process;
- Award it simultaneously with the lower blocks (1452 – 1479.5 MHz); and
- Award it separately from the lower blocks.

Option	Advantages	Disadvantages
<p>Pan-European award: This would involve withholding the award of the upper 12.5 MHz block and discussing with European neighbours how the spectrum should be awarded</p>	<p>If successful, it would take into account the externalities caused by different countries awarding spectrum for different uses, for example, the value of the spectrum across a number of countries will be greater than the sum of the value of the spectrum in each country individually, particularly for terrestrial use.</p> <p>If done quickly, it would lead to an efficient award of this block of spectrum.</p>	<p>Given the processes that would be involved, award of the spectrum would be delayed by around two years and agreement cannot be guaranteed.</p> <p>This approach would not allow complementarity and substitutability of upper 12.5MHz and lower 27.5MHz to be addressed through the award process.</p> <p>There are doubts about the feasibility and acceptability of an effective and appropriate approach to the award from the political and institutional point of view</p> <p>It would require individual nations to carry out a separate terrestrial awards for the use of the spectrum, in addition to a pan-European satellite award.</p>

Option	Advantages	Disadvantages
<p>Simultaneous award: This option would involve awarding the upper 12.5 MHz block simultaneously with the award of the spectrum in the lower 27.5 MHz blocks in a single awards process</p>	<p>To the extent to which the upper 12.5 MHz and the lower 27.5 MHz blocks are complementary or substitutable, then a simultaneous award will allow bidders to respond to these issues through changing their valuations/ bids in response to other bidders' behaviour. This will, all other things remaining equal, lead to a more efficient allocation of the available spectrum.</p> <p>It would also be quicker and administratively cheaper than holding a separate auction for the upper 12.5 MHz block.</p> <p>It would be consistent with awarding spectrum rights on a technology and usage-neutral basis.</p> <p>It would result in spectrum for both satellite and terrestrial use being awarded simultaneously.</p>	<p>Terrestrial rights in the upper 12.5 MHz block will be severely constrained (and may not be well defined) by the satellite rights that result from the various satellite filings that have been made, which may limit any interest that there would be for terrestrial rights in this block. This could result in competition in bidding for this upper block being limited.</p> <p>It increases the complexity of the award process somewhat, but this increase in complexity is not significant.</p>
<p>Separate award: This would involve holding back the award of the upper 12.5 MHz block until some time after the award of the lower 27.5 MHz blocks.</p>		<p>Awarding the upper 12.5 MHz block in a separate process from the award of the lower 27.5 MHz would prevent bidders from taking into account the extent to which spectrum in the different blocks are substitutes or compliments, risking an inefficient allocation of the spectrum.</p> <p>It will be administratively more expensive than a simultaneous award process.</p>

Geographic packaging

8.11 In addition to packaging the spectrum into lots of different sizes this spectrum could be divided geographically. In the first instance the choice is between UK-wide and regional allocation.

Option	Advantages	Disadvantages
UK wide basis	<p>The auction should be cheaper and simpler than a regional one.</p> <p>If there is a viable national use and it is the highest value use of the spectrum, the spectrum will flow immediately to this use.</p>	<p>The value of the spectrum may be higher to a group of regional users which were unable to come together to bid for the spectrum because of coordination problems. However this risk is mitigated by the tradability of the spectrum and the ability for regional users to buy part of the spectrum post auction from the national licensee. There is no evidence that this issue is significant, on the basis of the market assessment.</p>
Regional basis	<p>Potential spectrum users which only want to operate in one area or region can bid for that region</p> <p>If the most efficient use of the spectrum is regional, the spectrum will quickly be allocated to its most valuable use.</p>	<p>There is little evidence of demand for spectrum on a regional basis, raising the likelihood that this approach could lead to spectrum being inefficiently allocated</p> <p>A regional auction may be more complex and costly than a national auction.</p> <p>Co-ordination with neighbours along regional boundaries could waste spectrum and limit the viability of service provision along these boundaries.</p>

Auction design options for the different packages

8.12 There are a number of different auction formats available, which may be suitable for the award of multiple lots of spectrum frequencies. In selecting the appropriate format for this auction, it is helpful to consider four key choices in design:

- Simultaneous or sequential sale of lots;
- Single round (sealed bid) or multiple rounds (ascending bids);
- Generic or specific lots; and
- Package (combinatorial) bidding.

8.13 The advantages and disadvantages associated with each of these four choices in auction design are set out in the table below

Option	Advantages	Disadvantages
Simultaneous rather than sequential sale of lots	<p>For most categories of bidder, all the lots are potentially close substitutes meaning that bidders' preferences will be affected by the relative prices of individual lots.</p> <p>Most bidders are likely to bid for multiple lots, meaning the lots are complementary.</p> <p>Simultaneous award can reduce bidders' substitution and aggregation risks.</p>	
Multiple round (ascending bids) rather than single round (sealed bids)	<p>In the absence of competition concerns, considered to produce more efficient outcomes as bidders can learn from observing behaviour of competitors over the course of the auction – particularly important where the spectrum can be used to support new downstream services where there is greater uncertainty.</p> <p>Allowing bidders to respond to relative prices reduces substitution and aggregation risks</p>	Award process more complex than a single round award, but not so great as to justify using a significantly less efficient auction format.
Specific lots rather than generic lots	<p>Allows bidders to express a preference between lots.</p> <p>Allows bidders to reflect in their valuations differences between lots usage rights, relating to interference constraints as set out in the Maastricht Plan.</p>	More complex than award with generic lots.
Use of package (combinatorial) bidding	<p>Could enhance the efficiency of the auction, particularly where there are strong complementarities amongst lots, and the pattern of complementarities vary by bidder.</p> <p>Reduces risks of stranded lots where bidders are left with unwanted lots at the end of the auction</p> <p>Removes the risk that there could be unsold lots as a result of "step changes" in demand (which can occur in SMRAs where withdrawals are allowed).</p>	Can make the auction more complex and less transparent, especially if unlimited packages are allowed (full combinatorial SMRA).

Choice of specific auction format

8.14 Three candidate SMRA auction formats were considered in detail they were:

- The SMRA auction with augmented switching rules (“augmented switching”);
- The SMRA auction with limited package bidding (“limited package”); and
- The combinatorial clock auction (“combinatorial clock”).

8.15 The advantages and disadvantages of these three auction designs are considered against six criteria in the table below. Those criteria are:

- Bid shading;
- Aggregation risk/ stranded lots;
- Threshold problem;
- Complexity for bidders;
- Unsold lots; and
- Strategic demand reduction.

Bid shading	
Augmented switching	Bid shading is likely. This is particularly true where there is a risk of stranded lots (see below). With such a risk, bidders bid more cautiously than they would otherwise do in attempt to avoid being stranded with unwanted lots.
Limited package	Bid shading is possible. This is particularly so where bidders are seeking packages of lots that do not equate with the pre-specified package of 5.1 MHz. This is for the same reason as with a SMRA with augmented switching rules and the risk that bidders will be stranded with unwanted lots.
Combinatorial clock	This auction format should reduce any incentive for a bidder to shade its bids compared to the other candidate formats. This is because the calculation of the price that winning bidders pay will minimise payments, subject to the condition that no losing bidder or combination of bidders (including combinations of losing and winning bidders) would, on the basis of their bids, be willing to pay more. It may be that some incentive to shade bids will remain, but this incentive is likely to be weak.
Aggregation risk/ stranded lots	
Augmented switching	While augmented switching rules can mitigate aggregation risks, there remains a risk of stranded lots with this auction format. The ability of bidders to switch away from lots as prices increase mean that bidders seeking packages of lots risk being stranded with a subset of the lots on which they were bidding when the auction ends.
Limited package	By pre-packaging lots, this auction format reduces aggregation risks for bidders, removing them completely for those bidders seeking 5.1 MHz of spectrum. However, risks remain for those bidders seeking different sized packages.

Combinatorial clock	All package bids are mutually exclusive. This means that bidders will only face the possibility of winning packages that they have explicitly bid for and as such, as long as bidders bid truthfully, there is no aggregation risk for bidders or a risk of being stranded with unwanted lots.
Threshold problem	
Augmented switching	The threshold problem does not arise with this auction format because there are no package bids.
Limited package	The threshold problem could be prominent in this auction format, particularly if there is demand for single lots from some bidders and these bidders are seeking to outbid those bidders seeking 5.1 MHz packages.
Combinatorial clock	Clock auctions can help small bidders to co-ordinate their bids where there is a threshold problem. However, to the extent there is demand for small packages of lots (including single lots), the threshold problem will to some extent remain.
Complexity for bidders	
Augmented switching	This auction format would be complex for bidders. While the mechanics of bidding are quite simple and this is a variation on the widely used SMRA format, bidders will need to manage the process of switching bids across multiple lots and reconcile their own demand with that of other bidders. Further, there may be scope for strategic behaviour by bidders, which could distort outcomes (although activity rules can go some way to mitigate this risk).
Limited package	This auction format should be relatively straightforward for bidders. Bidders will interact with a relatively straightforward bidding tool and will be able to express demand for specific lots, shifting demand in response to changes in relative prices. However, as prices will be calculated using an algorithm, the calculation of these prices may not be transparent.
Combinatorial clock	The clock stage would be relatively straightforward for bidders, who would be able to bid on a mutually exclusive basis on packages of lots in each round of the clock stage. Moreover, whilst bidders may need to submit supplementary bids for a number of packages, the challenge of doing this should be reduced by the price discovery which the clock stage should provide.
Unsold lots	
Augmented switching	As there is an aggregation risk and a risk of stranded lots with this auction format, there will also be a risk of unsold lots. However, this risk can be reduced by the design of the switching rules, although reducing the risk of unsold lots will increase the risk of stranded lots as the risk would be shifted from the auctioneer to the bidders.
Limited package	There would remain some risk of unsold lots with this auction format.
Combinatorial	There is unlikely to be unsold lots with this auction format as all bids are

clock	mutually exclusive and bids from the clock stage carry through to the best and final offers stage. The risk of unsold lots will be greater where there is a lack of competition.
Strategic demand reduction	
Augmented switching	The risk of strategic demand reduction exists with this auction format, although because prices will not necessarily be uniform across lots, then there is a reduction in the incentive for bidders to strategically reduce demand, so may not be that relevant.
Limited package	There is also a risk of strategic demand reduction with this auction format, although again because prices will not necessarily be uniform across lots there is a reduction in the incentive for bidders to strategically reduce demand, so may not be that relevant.
Combinatorial clock	As prices are not required to be uniform across lots in this auction design, strategic demand reduction is unlikely to be of concern with this auction format.

Costs to Ofcom

8.16 The costs of Ofcom's decision to award the licences relate mainly to the costs of carrying out the award process. The administrative costs of the award process should be small in relation to the benefit generated to the economy and the award process is very unlikely to have a negative financial impact.

Business sectors affected

8.17 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio.

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

Conclusions

8.19 Having considered the advantages and disadvantages of the options, and in light of all of the responses to the consultation, Ofcom has concluded that:

- The spectrum should be licensed rather than licence exempted;
- The spectrum should be awarded using an auction mechanism;
- It should take a technology and service neutral approach;
- The lower 27.5 MHz should be packaged as individual lots each of approximately 1.7 MHz;
- The upper 12.5 MHz of spectrum should be packaged as a single lot;

- The upper 12.5 MHz of spectrum should be awarded simultaneously with the lower 27.5 MHz;
- All of this spectrum should be awarded on a UK wide basis (subject to any international restrictions);
- A simultaneous, multiple round ascending auction process that allows combinatorial bidding should be used to award this spectrum;
- It is appropriate to use specific lots rather than generic lots; and
- The most appropriate SMRA auction format to use is the combinatorial clock auction format.

Regulatory Impact Assessment – the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008

Proposal, purpose and intended effect

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

Costs and benefits to business

- 8.21 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment for the Spectrum Trading and Wireless Telegraphy Register Regulations 2004, published in December 2004. It concluded that the likely benefits of spectrum trading greatly outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded (and for whom the benefit of the spectrum trade should exceed the costs anyway). This analysis of the general benefits of introducing spectrum trading should also apply to the Spectrum Band.
- 8.22 Ofcom considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers. Ofcom can see no reason why its general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer. It is unlikely that the additional coordination costs for third parties, that might arise as a result of concurrent or partial transfers, would be significant.

Costs to Ofcom

- 8.23 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up, and including the Spectrum Band within the framework should require little additional cost.

Business sectors affected

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

Conclusion

- 8.26 Ofcom has assessed the impact of allowing spectrum trading in the Spectrum Band and has found that the costs are not likely to outweigh the benefits for all types of transfer.

Regulatory Impact Assessment – the Wireless Telegraphy (Register) (Amendment) Regulations 2008

Proposal, purpose and intended effect

- 8.27 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.
- 8.28 The intended effect of this proposal is to enable information about the Licences to be published in this Wireless Telegraphy Register. In so doing this should facilitate spectrum trading by providing information which will enable potential buyers to find out who holds what frequencies and the constraints on the use of the specific frequencies or bands.

Costs and benefits

- 8.29 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register. This amendment to those regulations only has the effect of including the Spectrum Band within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- 8.30 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for these regulations. Those conclusions were that the benefits of a having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and limited to updating the register for the Spectrum Band. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.
- 8.31 Moreover, now that the register has been set up, the additional costs of including the Spectrum Band within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Business sectors affected

- 8.32 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio.
- 8.33 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusions

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

Regulatory Impact Assessment – the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2008

Proposal, purpose and intended effect

- 8.35 Following the Statement on the award of available the spectrum Ofcom has decided to award licences by means of an auction.
- 8.36 The Limitation Order to which this RIA relates is intended to allow Ofcom to limit the number of users of the Band through the award of licences, as opposed to exempting from licensing the use of radio equipment in the Spectrum Band and so allowing an unlimited number of users.
- 8.37 This will enable Ofcom to proceed with the award of this spectrum by auction. The way that Ofcom will award a limited number of licences for the Spectrum Band is set out in the Wireless Telegraphy (Licence Award) Regulations 2008.

Costs and benefits to business

- 8.38 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.
- 8.39 The decision to license the Spectrum Band, as opposed to making its use licence exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. However, if the use of the Spectrum Band were licence exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users co-ordinated with each other. Ofcom's technical research has shown that this would impose large costs due to interference between users. These costs would generally outweigh the benefit of licence exemption.

Costs to Ofcom

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

Business sectors affected

- 8.43 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio.
- 8.44 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusion

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

Section 5

Next steps

- 9.1 We made the four statutory instruments in connection with the award process on 12 March 2008 and they will come into force on 02 April 2008. Drafts of these statutory instruments are annexed to this Statement for indicative purposes in the form submitted for registration and publication after they were made. The statutory instruments will be officially published on OPSI's website in due course at www.opsi.gov.uk.
- 9.2 We provisionally expect the date for receipt of application forms to be 10 April 2008. We will publish the exact date and times on our website at: www.ofcom.org.uk/radiocomms/spectrumawards/, once the Licence Award Regulations have come into force.
- 9.3 All relevant information and documents relating to the award of the Spectrum Band will be published at www.ofcom.org.uk/radiocomms/spectrumawards/. For example, we will make electronic versions of the application form available for download, once they are available, in the form prescribed by the Schedules to the Licence Award Regulations.
- 9.4 Section 4 of the Information Memorandum includes a flowchart that illustrates the various stages of the award process. The duration of the process will depend on the requirement for an auction stage and the number of primary bid rounds in the auction. We expect the bidding process to begin in late April or early May 2008.

Annex 1

Draft statutory instruments

A1.1 This annex includes a copy of the statutory instruments as made by Ofcom on 12 March 2008 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 2008;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008;
- The Wireless Telegraphy (Register) (Amendment) Regulations 2008; and
- The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2008.

2008 No. 686

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Award) Regulations 2008

Made - - - - *12th March 2008*

Coming into force - - *2nd April 2008*

CONTENTS

PART 1

INTRODUCTORY

1. Citation, commencement and extent
2. Interpretation

PART 2

APPLICATION STAGE

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

PART 3

QUALIFICATION STAGE

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

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

11. Lot selection menu
12. Grant of licence
13. Completion of the award process

PART 5
PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

14. Auction stage

CHAPTER 2

Primary bids and supplementary bids

15. Primary bids
16. Requirement for a valid primary bid in the first primary bid round
17. Supplementary bids
18. Number of primary bid rounds
19. Determination of round prices for primary round bids
20. Bidder's eligibility for primary bid rounds
21. Determination of bidder's eligibility limit for the first primary bid round
22. Determination of bidder's eligibility limit for subsequent primary bid rounds
23. Additional deposit before first primary bid round
24. Valid primary bids
25. Valid supplementary bids
26. Restrictions on the amount of a supplementary bid

CHAPTER 3

Procedure for primary bid rounds

27. Notice to be given to bidders before primary bid rounds and extensions to rounds
28. Submission of primary bid form to OFCOM
29. Alternative method for submission of primary bid form
30. Incomplete or defective primary bid form
31. Notification that primary bid not valid
32. Release of information on primary bids in auction stage
33. Additional deposit for primary bid rounds

CHAPTER 4

Procedure for supplementary bids round and final auction stage deposit

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

CHAPTER 5

Determination of winning auction stage bids and conclusion of auction stage

41. Determination of the winning auction stage bids and the winning combination of auction stage bids
42. Unallocated lots
43. Determination of winning price of winning auction stage bids
44. Notification of results of auction stage

CHAPTER 6

Grant stage

45. Determination of the licence fee
46. Procedure where amount of bidder's deposit is less than the licence fee
47. Procedure where amount of bidder's deposit is greater than or equal to the licence fee
48. Completion of the award process

PART 6

ACTIVITY RULES

49. Forfeit of deposit and exclusion from award process
50. Bids made by an excluded bidder
51. Events

PART 7

MISCELLANEOUS

52. General power of exclusion
53. Notification to OFCOM
54. Changes to timing or location
55. Changes to round times and use of electronic auction system
56. Rerunning rounds
57. Refunds

-
- SCHEDULE 1 — APPLICATION FORM AND WARRANTY
 - SCHEDULE 2 — DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER GROUP WHO IS NOT AN ASSOCIATE
 - SCHEDULE 3 — LOT SELECTION MENU WHERE THERE IS ONLY ONE BIDDER
 - SCHEDULE 4 — ROUND PRICE IN THE FIRST PRIMARY BID ROUND
 - SCHEDULE 5 — ELIGIBILITY POINTS ASSOCIATED WITH LOTS
 - SCHEDULE 6 — DETERMINATION OF PRICE

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

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

(a) 2006 c.36.

PART 1

INTRODUCTORY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2008 and shall come into force on 2nd April 2008.

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

Interpretation

2. In these Regulations—

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

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

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

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

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

“bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;

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

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

“compatible combination of bids” means any combination of valid auction stage bids—

- (a) where the combination includes at most one bid from each bidder;
- (b) where each lot is selected in no more than one bid; and
- (c) where any two bids within the combination have different choices of licence condition, the frequencies which are comprised within at least two lots which are not selected in any bid within the combination separate the lots selected in these two bids where the different licence conditions have been chosen;

“confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

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

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

by which that requirement must be fulfilled by that person;

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

“end of round time” has the meaning given in regulation 28(2);

“high power licence condition” means the licence condition which does not limit the maximum power of transmitters but limits the density of their deployment within a geographical area;

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

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

“licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at frequencies to be determined in accordance with the procedure set out in Part 4 or Part 5 of these Regulations;

“licence condition” means either the “high power licence condition” or the “low power licence condition”;

“lot” means a range of frequencies as set out in regulation 14(4);

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

“low power licence condition” means the licence condition which limits the maximum power of transmitters but does not limit the density of their deployment within a geographical area;

“MHz” means megahertz;

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

- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006^(a)) in—
 - (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
 - (ii) any share or shares in the case of which the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or
- (b) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

“OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their internet website;

“pounds” means pounds sterling;

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

“primary bid form” has the meaning given in regulation 15(3);

“round price” means the price per lot determined in accordance with regulation 19;

“supplementary bid” has the meaning given in regulation 17(1);

“supplementary bids form” has the meaning given in regulation 17(3);

“valid primary bid” has the meaning given in regulation 24(1);

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

“valid supplementary bid” has the meaning given in regulation 25(1);

“winning auction stage bid” shall be construed in accordance with regulation 41(1);

(a) 2006 c.45.

“winning bidder” means a bidder who submitted a winning auction stage bid;

“winning combination of auction stage bids” shall be construed in accordance with regulation 41(2); and

“winning price” has the meaning given in regulation 43.

PART 2 APPLICATION STAGE

Applications for the grant of a licence

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

Application

- 4.—(1) Only a body corporate may apply to OFCOM for a licence.
- (2) A body corporate may only make one application.
- (3) To apply for a licence, a body corporate must—
- (a) on the day specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by, and the warranty set out in, Schedule 1, completed in respect of the applicant and signed on its behalf by two authorised persons;
 - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its bidder group, a document in the form set out in Schedule 2 which has been—
 - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
 - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
 - (b) by the deadline specified by OFCOM, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of fifty thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website.

PART 3 QUALIFICATION STAGE

Assessment of bidder groups

- 5.—(1) OFCOM shall give notice to each applicant of—
- (a) the name of each other applicant and the names of its associates; and
 - (b) the deadline by when each applicant must make a notification under paragraph (3) or (4) (as the case may be).
- (2) On receipt of that notice, each applicant must examine the names of the other applicants and their respective associates and determine whether any member of its bidder group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM under paragraph (1), and OFCOM shall specify a further deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or is an applicant; and
- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) and which comply with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM in the notice under paragraph (1).

(5) If it appears to OFCOM from any application that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
- (b) where changes have occurred to its bidder group provide OFCOM with a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

(6) OFCOM shall record the members of each applicant's bidder group after the last deadline specified by OFCOM under paragraphs (3) and (5).

Subsequent changes to bidder groups

6.—(1) An applicant or bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group but, in relation to the award process, the applicant shall be subject to regulations 7(2) and 49 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 2 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed.

Determination of applicants which are qualified to bid

7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant's bidder group.

(3) In making their determination under paragraph (1), OFCOM shall take into account whether —

- (a) the grant of 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) each director of each member of the applicant's bidder group;

- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of the applicant's bidder group;
 - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
 - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (g) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
- (i) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups.

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

(5) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.

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

Publication of determination

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

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

Withdrawal of an application

9.—(1) OFCOM shall notify each applicant qualified to bid of the last day for withdrawal from the award process ("the last day for withdrawal") and shall publish the last day for withdrawal on OFCOM's internet website.

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

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

(4) Where an applicant withdraws its application in accordance with paragraph (2), that applicant's initial deposit shall not be forfeited for that reason.

Determination of number of bidders

10.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not already been forfeited under regulation 49) but not any interest which has accrued on the deposits.

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

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

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

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

Lot selection menu

11.—(1) Where there is only one bidder, OFCOM shall notify that bidder of—

- (a) a deadline by when the bidder must deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA a lot selection menu in the form set out in Schedule 3 completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
- (b) a further deadline by when the bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).

(2) The bidder must ensure that its lot selection satisfies the following conditions—

- (a) at least one lot is selected;
- (b) a licence condition is specified which it wishes to have included in the licence for that selection of lots.

(3) The licence fee shall be the total amount of the prices as specified by OFCOM on the lot selection menu for the lots selected by the bidder.

(4) The sum which the bidder must pay to OFCOM shall be—

- (a) where the initial deposit has not been forfeited in accordance with regulation 49, a sum equal to the licence fee less the initial deposit; or
- (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

Grant of licence

12.—(1) Where OFCOM have received from the bidder a completed lot selection menu in accordance with regulation 11(1)(a) and the required sum in accordance with regulation 11(1)(b), OFCOM shall grant the bidder a licence for the lots selected on that completed lot selection menu which includes the licence condition that matches the licence condition chosen by the bidder.

(2) Where OFCOM have not received from the bidder a completed lot selection menu in accordance with regulation 11(1)(a) or the required sum in accordance with regulation 11(1)(b), the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 49) be forfeited.

Completion of the award process

13. After the grant of the licence, OFCOM shall complete the award process by—
- (a) publishing on their internet website the name of the bidder to which a licence has been granted, the details of the lots in respect of which the licence was granted, the licence condition applying to the licence and the licence fee paid; and
 - (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 49) but not any interest which has accrued on the deposits.

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

Auction stage

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

(2) During the auction stage there shall be one or more rounds for the making of primary bids (“primary bid rounds”) and a further round for the making of supplementary bids (“supplementary bids round”).

(3) A bid made during the auction stage shall be a bid for a selection of lots.

(4) The lots available for selection are—

- (a) Lot LA - 1452.000 – 1453.816 MHz;
- (b) Lot LB - 1453.816 – 1455.528 MHz;
- (c) Lot LC - 1455.528 – 1457.240 MHz;
- (d) Lot LD - 1457.240 – 1458.952 MHz;
- (e) Lot LE - 1458.952 – 1460.664 MHz;
- (f) Lot LF - 1460.664 – 1462.376 MHz;
- (g) Lot LG - 1462.376 – 1464.088 MHz;
- (h) Lot LH - 1464.088 – 1465.800 MHz;
- (i) Lot LI - 1465.800 – 1467.512 MHz;
- (j) Lot LJ - 1467.512 – 1469.224 MHz;
- (k) Lot LK - 1469.224 – 1470.936 MHz;
- (l) Lot LL - 1470.936 – 1472.648 MHz;
- (m) Lot LM - 1472.648 – 1474.360 MHz;
- (n) Lot LN - 1474.360 – 1476.072 MHz;
- (o) Lot LO - 1476.072 – 1477.784 MHz;
- (p) Lot LP - 1477.784 – 1479.500 MHz; and
- (q) Lot LQ - 1479.500 – 1492.000 MHz.

CHAPTER 2

Structure of auction stage

Primary bids

- 15.—(1) A bid made during a primary bid round (“primary bid”) shall—
- (a) be a bid for a selection of lots at an amount in whole pounds which shall be the total amount of the round prices in that primary bid round for each lot included in the selection; and
 - (b) contain the choice of licence condition which the bidder wishes to have included in a licence for that selection of lots.
- (2) The round price means the price per lot determined in accordance with regulation 19.
- (3) In order to make a primary bid, a bidder must, on a form provided to the bidder by OFCOM (“primary bid form”)—
- (a) specify the selection of lots it wishes to be included in a licence;
 - (b) specify the choice of licence condition which it wishes to have included in a licence for that selection of lots; and
 - (c) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices for each lot included in that selection of lots.
- (4) A bidder shall submit no more than one primary bid in a primary bid round.
- (5) The selection of lots specified in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid in accordance with paragraph (6) does not exceed the bidder’s eligibility limit for that primary bid round as determined in accordance with regulation 21 or 22 (as the case may be) and notified to the bidder in accordance with regulation 27(1)(c).
- (6) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots specified in that primary bid set out in Schedule 5.

Requirement for a valid primary bid in the first primary bid round

16. Any bidder which does not submit a valid primary bid in the first primary bid round shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 23, which shall (where not already forfeited under regulation 49) be forfeited.

Supplementary bids

- 17.—(1) A bid made during the supplementary bids round (“supplementary bid”) shall—
- (a) be a bid for a selection of lots at an amount in whole pounds; and
 - (b) contain the choice of licence condition which the bidder wishes to have included in a licence for that selection of lots.
- (2) The amount of the supplementary bid shall be determined by the bidder, subject to the restrictions set out in regulation 26.
- (3) In order to make a supplementary bid, a bidder shall, on a form provided to the bidder by OFCOM (“supplementary bids form”)—
- (a) specify the selection of lots it wishes to be included in a licence;
 - (b) specify the choice of licence condition which it wishes to have included in a licence for that selection of lots; and
 - (c) specify an amount in whole pounds that it is willing to pay for the licence.

(4) The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in a primary bid made by the bidder.

(5) A bidder shall submit no more than two thousand supplementary bids in the supplementary bids round, subject to the restrictions set out in paragraphs (6) and (7).

(6) A bidder may not submit more than two supplementary bids for each particular selection of lots.

(7) Where a bidder submits two supplementary bids for a particular selection of lots, each of those supplementary bids must specify a different choice of licence condition.

(8) A bidder is not required to submit a supplementary bid.

Number of primary bid rounds

18.—(1) Where the combination of all bids received in a primary bid round is a compatible combination of bids—

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

(2) Where the combination of all bids received in a primary bid round is not a compatible combination of bids, there shall be a further primary bid round unless OFCOM determine in accordance with paragraph (3) that there shall be no further primary bid rounds.

(3) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be available to bidders under regulation 32 following any further primary bid rounds would affect—

- (a) the determination of the winning combination of auction stage bids in accordance with regulation 41; or
- (b) the determination of the winning price payable by the winning bidder in accordance with regulation 43.

(4) Where OFCOM have made a determination under paragraph (2) there shall be a supplementary bids round.

Determination of round prices for primary round bids

19.—(1) In the first primary bid round, the round price for each lot shall be the amount set out in Schedule 4.

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

(3) Where a further primary bid round occurs—

- (a) the round price for any lot where that lot was included in more than one bid in the previous primary bid round;
- (b) the round price for any lot where that lot was only included in one bid in the previous primary bid round where—
 - (i) one of the lots immediately adjacent to that lot was only included in one other bid; and
 - (ii) these two bids specified different choices of licence condition; and
- (c) the round price for any lot where that lot was only included in one bid in the previous primary bid round where—
 - (i) one of the lots immediately adjacent to that lot was not included in any bid;
 - (ii) the next immediately adjacent lot was only included in one other bid; and
 - (iii) these two bids specified different choices of licence condition;

shall be an amount that is higher than the amount that was the round price for that lot in the previous primary bid round, subject to the limitation in paragraph (4).

(4) In the circumstances described in paragraph (3), the amount of the round price for the lot shall not be more than twice the amount of the round price for that lot in the previous primary bid round.

(5) The amount of the round price for any lot not included in the circumstances described in paragraph (3), shall be the same amount as it was in the previous primary bid round.

Bidder's eligibility limit for primary bid rounds

20. Before each primary bid round, OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 21 or 22 (as the case may be).

Determination of bidder's eligibility limit for the first primary bid round

21.—(1) After the deadline specified in regulation 23(2) and before the start of the first primary bid round, OFCOM shall determine each bidder's eligibility limit for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by fifty thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 23, but not including any sum forfeited under regulation 49).

(3) Where the number that results from the calculation in paragraph (2) is greater than nineteen, the eligibility limit shall be nineteen.

(4) Where the number that results from the calculation in paragraph (2) is not greater than nineteen, the eligibility limit shall be—

- (a) that number; or
- (b) where the number is not a whole number, that number rounded down to the nearest whole number.

Determination of bidder's eligibility limit for subsequent primary bid rounds

22.—(1) For subsequent primary bid rounds, each bidder's eligibility limit shall be determined either under paragraphs (2) to (4) or under paragraph (5) (as the case may be).

(2) Where a bidder makes a valid primary bid in a primary bid round, OFCOM shall determine the bidder's eligibility limit for the next primary bid round by calculating the number of eligibility points associated with the valid primary bid.

(3) The number of eligibility points associated with a valid primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots specified in that primary bid in accordance with Schedule 5.

(4) The bidder's eligibility limit shall be a number equal to the number of eligibility points associated with that valid primary bid.

(5) Where a bidder does not make a valid primary bid in a primary bid round, the bidder's eligibility limit for the subsequent primary bid round shall be zero.

Additional deposit before first primary bid round

23.—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 21 for the purpose of calculating the bidder's eligibility limit for the first primary bid round.

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

Valid primary bids

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

- (a) the number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43;

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

(2) The conditions are that—

- (a) the primary bid is made on a primary bid form that has been completed in accordance with regulation 15(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 15(4);
- (c) the primary bid complies with the restriction set out in regulation 15(5); and
- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 28(1) and is received by OFCOM in accordance with regulation 28(2).

Valid supplementary bids

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

- (a) the winning combination of auction stage bids under regulation 41; and
- (b) the winning price payable by a winning bidder under regulation 43;

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

(2) The conditions are that—

- (a) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 17(3);
- (b) the amount of the supplementary bid specified by the bidder satisfies the requirements set out in regulation 26;
- (c) the supplementary bid is submitted in accordance with the restriction set out in regulation 17(6); and
- (d) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2).

Restrictions on the amount of a supplementary bid

26.—(1) The amount of a supplementary bid must be not less than the total amount of the round prices in the first primary bid round for the selection of lots comprised in the supplementary bid

(2) Where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary bid and the licence condition chosen is the same in the primary bid and the supplementary bid, the amount of the supplementary bid must be greater than the amount of the highest primary bid made by the bidder for that selection of lots for which the licence condition chosen is the same as that in the supplementary bid.

(3) Where—

- (a) the bidder did not make a valid primary bid in the final primary bid round; or
- (b) the total number of eligibility points associated with the selection of lots comprised in the supplementary bid is greater than the total number of eligibility points associated with the selection of lots comprised in the valid primary bid made by the bidder in the final primary bid round,

the amount of the supplementary bid must not be greater than the amount determined in accordance with paragraph (4).

(4) The amount referred to in sub-paragraph (3) is the total amount of the round prices for the selection of lots comprised in the supplementary bid in the latest primary bid round in which a

primary bid made by the bidder for that selection of lots could have satisfied the rules set out in regulation 15(5).

CHAPTER 3

Procedure for primary bid rounds

Notice to be given to bidders before primary bid rounds and extensions to rounds

27.—(1) Before the start of each primary bid round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, subject to paragraph (2), bidders may make primary bids;
- (b) in respect of each lot, the round price for the lot (determined in accordance with regulation 19); and
- (c) the eligibility limit for that bidder for that primary bid round (determined in accordance with regulation 21 or 22 as the case may be).

(2) The time notified by OFCOM under paragraph (1)(a) as the end of the primary bid round (“end of round time”) may be treated by a bidder in respect of—

- (a) no more than two primary bid rounds; and
- (b) for each primary round in respect of which paragraph (3) applies to the bidder, a further primary bid round,

as that time extended by thirty minutes, and OFCOM shall treat the extended time as the end of round time for the purposes of paragraph (1)(a).

(3) This paragraph applies to a bidder where—

- (a) in respect of a previous primary bid round, the bidder treated the end of round time for that round as extended by thirty minutes in accordance with paragraph (2);
- (b) the bidder submitted its completed primary bid form for that primary bid round so that it was received by OFCOM by the end of round time so extended; and
- (c) OFCOM have notified the bidder that they are satisfied that, in respect of that primary bid round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its primary bid form so that it was received by OFCOM by the end of round time without such an extension.

Submission of primary bid form to OFCOM

28.—(1) Except as provided for in regulation 29, the bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.

(2) The completed primary bid form must be submitted to OFCOM by the end of round time.

Alternative method for submission of primary bid form

29.—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a primary bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the primary bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Incomplete or defective primary bid form

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

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

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

- (a) the number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43.

Notification that primary bid not valid

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

Release of information on primary bids in auction stage

32. After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of—

- (a) the number of bids made in that round which selected each lot available for selection; and
- (b) the number of those bids which specified each choice of licence condition for each lot available for selection.

Additional deposit for primary bid rounds

33.—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 15(3)(c) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) OFCOM may, having regard to the desirability of securing an efficient outcome to the auction stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) is not less than the highest valid primary bid that the bidder made before OFCOM issued the notification under paragraph (1).

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

(4) Where a bidder does not satisfy the provisions set out in paragraph (3), OFCOM shall notify the bidder of that fact and for any primary bid rounds following notice being given under this paragraph the bidders eligibility limit shall be zero.

CHAPTER 4

Procedure for supplementary bids round and final auction stage deposit

Notice to be given to bidders before supplementary bids round

34. Before the start of the supplementary bids round, OFCOM shall notify each bidder of —
- (a) the date on which, and the times on that date within which, subject to regulation 37, bidders may make supplementary bids; and
 - (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

Submission of supplementary bids form to OFCOM

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

(2) Except as provided for in regulation 37, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 34(a).

Alternative method for submission of supplementary bids form

36.—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a supplementary bids form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Extension to supplementary bids round

37.—(1) Where OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 34(a) and paragraph (2) applies, the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not have submitted its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

Incomplete or defective supplementary bids form

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

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

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
 - (i) the winning combination of auction stage bids under regulation 41; and
 - (ii) the price payable by a winning bidder under regulation 43;
- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
 - (i) the winning combination of auction stage bids under regulation 41; and
 - (ii) the price payable by a winning bidder under regulation 43.

Notification that supplementary bid not valid

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

Final auction stage deposit

40.—(1) By the deadline notified to bidders under regulation 34(b), each bidder must pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 or 33 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 49) is not less than whichever is the greater of—

- (a) the amount of the bidder’s highest valid primary bid as specified by the bidder under regulation 15(3)(c); and
- (b) the amount of the bidder’s highest valid supplementary bid as specified by the bidder under regulation 17(3)(c).

(2) Where a bidder does not satisfy the provisions set out in paragraph (1), OFCOM shall notify the bidder of that fact and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sums paid as a deposit under regulation 23, 33 or paragraph (1), which shall (where not already forfeited under regulation 49) be forfeited, and all of that bidder’s primary bids and supplementary bids shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41; and
- (b) the winning price payable by a winning bidder under regulation 43.

CHAPTER 5

Determination of winning auction stage bids and conclusion of auction stage

Determination of the winning auction stage bids and the winning combination of auction stage bids

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

(2) Unless paragraph (3) applies, the winning combination of auction stage bids shall be the compatible combination of bids having the highest total value of amounts bid.

(3) Where there is more than one compatible combination of bids for which the total value is equal highest, the winning combination of auction stage bids shall be determined in accordance

with the order of precedence set out in paragraph (4) or, where paragraph (5) applies, in accordance with that paragraph.

(4) The order of precedence shall be determined by the total number of eligibility points associated with each compatible combination of bids in accordance with paragraph (6) such that compatible combinations of bids to which a greater total number of eligibility points are associated prevail over compatible combinations of bids to which a lesser total number of eligibility points are associated.

(5) Where the same number of eligibility points is associated, in accordance with paragraph (6), with any two or more compatible combinations of bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those compatible combinations of bids to determine the winning combination of auction stage bids.

(6) The number of eligibility points associated with a compatible combination of bids shall be a number equal to the total of the eligibility points associated with each lot included in the selections of lots specified in the bids constituting that compatible combination of bids in accordance with Schedule 5.

Unallocated lots

42.—(1) Where the winning combination of auction stage bids results in some lots not being included in any winning auction stage bid (“unallocated lots”), OFCOM shall—

- (a) where there are only two adjoining unallocated lots situated immediately between lots selected in winning auction stage bids with different choices of licence condition, assign to the winning bidders for those winning auction stage bids the unallocated lot adjacent to the lot selected in their winning auction stage bid; and
- (b) in any other situation where there are unallocated lots, withhold those lots from being assigned.

(2) A winning bidder’s choice of licence condition does not apply to any unallocated lots assigned to it.

Determination of winning price of winning auction stage bids

43. In respect of each winning auction stage bid, OFCOM shall determine an amount in accordance with Schedule 6 (“the winning price”) which shall be payable by the relevant winning bidder.(a)

Notification of results of auction stage

44. Following determination of the winning combination of auction stage bids under regulation 41 and the determination of the winning price for each winning auction stage bid under regulation 43, OFCOM shall notify each bidder of—

- (a) the names of the winning bidders; and
- (b) in respect of each winning bidder—
 - (i) the lots comprised in its winning auction stage bid;
 - (ii) the licence condition which will be included in the licence for those lots;
 - (iii) any unallocated lots assigned to it under regulation 42(1)(a); and
 - (iv) the winning price for that winning auction stage bid.

(a) On 12th March 2008, OFCOM published notes on the determination of the licence fees payable by bidders in a document called ‘Notes on the determination of licence fees payable by bidders in relation to the award of the 1452MHz-1492MHz spectrum band: Schedule 6 to the Wireless Telegraphy (Licence Award) Regulations 2008’.

CHAPTER 6

Grant stage

Determination of the licence fee

45. The licence fee payable by a winning bidder shall be the amount equal to the winning price for that winning bidder's winning auction stage bid determined by OFCOM under regulation 43.

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

46.—(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) is an amount that is less than the amount of the winning bidder's licence fee as determined in accordance with regulation 45—

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

(2) The sum which the winning bidder must pay to OFCOM shall be the difference between the amount of the winning bidder's licence fee determined in accordance with regulation 43 and the amount of the winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49).

(3) Where a winning bidder has satisfied the provisions set out in paragraph (1)(b), OFCOM shall grant that winning bidder a licence for the selection of lots contained in that winning bidder's winning auction stage bid which includes the licence condition that matches the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that bidder under regulation 42(1)(a).

(4) Where a winning bidder does not satisfy the provisions set out in paragraph (1)(b), the winning bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sums paid as a deposit under regulations 23, 33 or 40, which shall (where not already forfeited under regulation 49) be forfeited.

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

47.—(1) Where the amount of winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33 or 40, but not including any sum forfeited under regulation 49) is greater than or equal to the amount of the winning bidder's licence fee determined in accordance with regulation 45, OFCOM shall—

- (a) grant the winning bidder a licence for the selection of lots contained in that bidder's winning auction stage bid which includes the licence condition that matches the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that winning bidder under regulation 42(1)(a); and
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) and the amount of the winning bidder's licence fee determined in accordance with regulation 45, but not any interest which has accrued on the deposit.

Completion of the award process

48. OFCOM shall complete the award process by—
- (a) publishing on their internet website details of all valid auction stage bids made by each bidder, the names of the persons to whom licences were granted, the selection of lots included in those licences, the licence conditions included in those licences and the details of the licence fees paid; and
 - (b) refunding to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders, the initial deposits and any sums paid as a deposit under regulations 23, 33 or 40 (where such deposits have not been forfeited under regulation 16, 40(2) or 49), but not any interest which has accrued on the deposits.

PART 6

ACTIVITY RULES

Forfeit of deposit and exclusion from award process

49. If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 51 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulations 23, 33, or 40 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

Bids made by an excluded bidder

50.—(1) Where a bidder is excluded from the award process under regulation 49(b) during the auction stage, all of the primary bids and supplementary bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41;
- (b) the winning price payable by a winning bidder under regulation 43.

Events

51. The events referred to in regulation 49, in relation to an applicant or bidder, are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding (or attempting to collude) with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM
 - (ii) to a member of that applicant's or bidder's bidder group;

- (iii) to a provider of finance for the purpose of raising finance for a bid; or
- (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group 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; and
- (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of —
 - (i) a person ceasing to be a member of that bidder group;
 - (ii) a person joining that bidder group under the procedure in regulation 6(3); and
 - (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

52. 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

53. If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel which are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM —

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

Changes to timing or location

54.—(1) Subject to regulations 55 and 56, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations, to be delivered at the place specified or by the deadline specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations, to be completed by the deadline specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify the applicants or bidders (as the case may be) that—

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

Changes to round times and use of electronic auction system

55.—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all reasonable steps to notify bidders of an alternative method of participating in the auction and any requirements relating to the use of passwords and authentication of communications made by means of the alternative method.

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

Rerunning rounds

56.—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect).

(2) Where this paragraph applies, OFCOM shall—

- (a) take all reasonable steps to notify bidders of its determination under paragraph (1);
- (b) disregard the bids made in that round; and
- (c) resume the award procedure from the end of the previous round of the auction (or, if there was no previous round, from the start of the first primary bid round).

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 of these Regulations because of technical failure (or an event or circumstance with similar effect).

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

- (a) to disregard the bids made in one or more rounds; and
- (b) to resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to resume the award process from the start of the first primary bid round.

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

Refunds

57. 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.

12th March 2008

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

APPLICATION FORM AND WARRANTY**1. Details of the applicant**

Provide the following details for the applicant—

Applicant's full name

Registered number of company

Registered office of company

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

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

2. Authorised persons

Provide details of the name and position in the applicant of at least three and no more than five persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

3. Directors or members

Provide the name and job title of each of the directors or members of the managing body of the applicant.

4. Bidder group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) Regulations 2008 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 2 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 7 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of 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.

7. Warranty

Provide the following warranty as part of you application—

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

- (a) the persons authorised in section 2 of the applicant’s application have read and understood the Wireless Telegraphy (Licence Award) Regulations 2008 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant, true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 49 and 51 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.”

**DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER GROUP
WHO IS NOT AN ASSOCIATE**

[Insert name of applicant or bidder] (the “applicant/bidder”) wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder’s bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2008 (“the Regulations”) for the purpose of the award process under the Regulations.

Under regulation 7(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant’s bidder group. Regulations 49 and 51 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), 49 and 51 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] has ever—

- (a) been or becomes a member of any other applicant’s or bidder’s bidder group;
- (b) been or becomes a subsidiary of a member of any other applicant’s or bidder’s bidder group during the award process; or
- (c) 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 49 and 51 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

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

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

SCHEDULE 3

Regulation 11(1)(a)

LOT SELECTION MENU WHERE THERE IS ONLY ONE BIDDER

Bidder's full name:

Bidder's address:

Telephone number:

Fax number:

E-mail address:

<i>Lot</i>	<i>Frequency Range</i>	<i>Price</i>	<i>Selection</i>
LA	1452.000-1453.816	£50,000	
LB	1453.816-1455.528	£50,000	
LC	1455.528-1457.240	£50,000	
LD	1457.240-1458.952	£50,000	
LE	1458.952-1460.664	£50,000	
LF	1460.664-1462.376	£50,000	
LG	1462.376-1464.088	£50,000	
LH	1464.088-1465.800	£50,000	
LI	1465.800-1467.512	£50,000	
LJ	1467.512-1469.224	£50,000	
LK	1469.224-1470.936	£50,000	
LL	1470.936-1472.648	£50,000	
LM	1472.648-1474.360	£50,000	
LN	1474.360-1476.072	£50,000	
LO	1476.072-1477.784	£50,000	
LP	1477.784-1479.500	£50,000	
LQ	1479.500-1492.000	£150,000	

Licence Condition Choice

(Please choose one licence condition only in the table below)

High Power licence condition	
Low Power licence condition	

SCHEDULE 4

Regulation 19(1)

ROUND PRICE IN THE FIRST PRIMARY BID ROUND

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

<i>Column (1)</i> <i>Lot</i>	<i>Column (2)</i> <i>Price in the first primary bid round</i>
LA	£50,000
LB	£50,000
LC	£50,000
LD	£50,000
LE	£50,000
LF	£50,000
LG	£50,000
LH	£50,000
LI	£50,000
LJ	£50,000
LK	£50,000
LL	£50,000
LM	£50,000
LN	£50,000
LO	£50,000
LP	£50,000
LQ	£150,000

SCHEDULE 5 Regulations 15(6), 22(3) and 41(6)

ELIGIBILITY POINTS ASSOCIATED WITH LOTS

The number of eligibility points associated with a lot of a description mentioned in an entry in Column (1) is the number of points shown in the corresponding entry in Column (2).

<i>Column (1)</i> <i>Lot</i>	<i>Column (2)</i> <i>Number of eligibility points</i>
LA	1
LB	1
LC	1
LD	1
LE	1
LF	1
LG	1
LH	1
LI	1
LJ	1
LK	1
LL	1
LM	1
LN	1
LO	1
LP	1
LQ	3

DETERMINATION OF WINNING PRICE

Winning price

1.—(1) In determining the winning price for each winning auction stage bid, OFCOM shall impose the requirements set out in paragraphs 2 to 5.

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

First requirement

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

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

Second requirement

3.—(1) Taking the winning prices for the winning auction stage bids together, the winning prices shall be such that if—

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

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

(2) The bids mentioned in sub-paragraphs (1)(a) and (b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid auction stage bids for the purposes of this paragraph.

Third requirement

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

Fourth requirement

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

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

$$OCV = \sum (p - c)^2$$

where—

“*p*” means the price for a winning auction stage bid; and

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

(3) The formula is—

$$c = u - t + b$$

where—

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

“*t*” means the total amount of the winning auction stage bids; and

“*b*” means the amount of the winning auction stage bid for which *p* is the price.

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

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency between 1452 MHz to 1492 MHz.

To apply, a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. An initial deposit of fifty thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

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 names 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 OFCOM will give the bidder a notice, setting out the deadline by when the completed lot selection menu must be provided to OFCOM and the deadline by when the bidder must transfer to OFCOM the balance of the licence fee (regulation 11).

Under Part 5, the process for the award of licences will consist of two stages.

The first stage, called the auction stage, is the procedure set out in Chapters 2 to 5 of Part 5. During the auction stage there will be an auction with at least two rounds during which bidders will be able to make bids for a selection of lots (a term defined in regulation 2). OFCOM will determine the winning bids in accordance with regulation 41, and will determine the price payable in respect of each winning bid in accordance with regulation 43 and Schedule 6.

The second stage, called the grant stage, is the procedure set out in Chapter 6 of Part 5. OFCOM will grant licences to winning bidders and refund any sums due to winning bidders under regulation 47(1)(b).

If in relation to an applicant which is qualified to bid or a bidder OFCOM are satisfied that certain events are occurring or have occurred and that the occurrence would materially affect the outcome of the award process, the applicant or bidder concerned will forfeit sums on deposit held by OFCOM and may be excluded from the award process (regulation 49).

A full regulatory impact assessment of the effect these Regulations will have on the cost to business has been prepared. Copies of the impact assessment and copies of the publication referred to on page 19 of these Regulations are available to the public from the OFCOM library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA, telephone 020 7981 3000 or on the OFCOM internet website at www.ofcom.org.uk. Copies of the impact assessment have also been placed in the libraries of both Houses of Parliament.

2008 No. 688

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Spectrum Trading) (Amendment)
Regulations 2008**

Made - - - - *12th March 2008*

Coming into force - - *2nd April 2008*

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 2008 and shall come into force on 2nd April 2008.

Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2004

2. Part 4 of the Schedule to The Wireless Telegraphy (Spectrum Trading) Regulations 2004(b) is amended by inserting at the end of Column 2, “1452–1492 MHz”.

12th March 2008

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

(a) 2006 c. 36

(b) S.I. 2004/3154 as amended by S.I. 2006/339, S.I. 2006/1807, S.I. 2007/380 and S.I. 2007/3387

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”), which have been amended on four other occasions (S.I. 2006/339, S.I. 2006/1807, S.I. 2007/380 and S.I. 2007/3387).

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 within the frequency band 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 7891 3000) or on the OFCOM internet website at www.ofcom.org.uk. Copies of the report have also been placed in the libraries of both Houses of Parliament.

2008 No. 689

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Register) (Amendment) Regulations
2008**

Made - - - - *12th March 2008*

Coming into force - - *2nd April 2008*

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 2008 and shall come into force on 2nd April 2008.

Amendment of the Wireless Telegraphy (Register) Regulations 2004

2. Part 4 of the Schedule to The Wireless Telegraphy (Register) Regulations 2004(b) is amended by inserting at the end of Column 2, “1452–1492 MHz”.

12th March 2008

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

(a) 2006 c. 36

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

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 four other occasions (S.I. 2006/340, S.I. 2006/1808, S.I. 2007381 and S.I. 2007/3389).

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.

Regulation 2 of these Regulations amends the Schedule to the Principal Regulations by specifying a further frequency.

A full regulatory impact assessment of the effect that these Regulations 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: 0207 7981 3000) or on the OFCOM internet website at www.ofcom.org.uk. Copies of the report have also been placed in the libraries of both Houses of Parliament.

2008 No. 687

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Limitation of Number of Spectrum
Access Licences) Order 2008**

Made - - - - *12th March 2008*

Coming into force - - *2nd April 2008*

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 2008 and shall come into force on 2nd April 2008.

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

Limitation of licences

2.—(1) OFCOM shall grant a limited number of wireless telegraphy licences for the use of the frequency band 1452-1492 MHz in the United Kingdom.

(2) In determining the number of wireless telegraphy licences to be granted for the use of these frequencies and the persons to whom the wireless telegraphy licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2008(b).

12th March 2008

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

(a) 2006 c. 36
(b) S.I. 2008/686

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 the United Kingdom.

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. Copies of the report have also been placed in the libraries of both Houses of Parliament.