



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

### CHAPTER II

#### SOUND BROADCASTING SERVICES

##### *National services*

#### **100 Award of national licence to person submitting highest cash bid.**

- (1) Subject to the following provisions of this section, [<sup>F1</sup>OFCOM] shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.

[<sup>F2</sup>(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—

- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where—

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

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*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Section 100. (See end of Document for details)*

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OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

- (2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—
  - (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
  - (b) they propose to exercise their power under subsection (3).
- (2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).
- (2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.]
- (3) [F<sup>1</sup>OFCOM] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to [F<sup>1</sup>OFCOM], in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (4) If it appears to [F<sup>1</sup>OFCOM], in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 102(1), or
  - (b) otherwise financing the provision of his proposed service.
- (7) Where [F<sup>1</sup>OFCOM] are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.

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- (8) Where [<sup>F1</sup>OFCOM] have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to [<sup>F1</sup>OFCOM] that the requirement specified in section 99(1)(a) was satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [<sup>F1</sup>OFCOM]'s reasons for the licence having been so awarded; and
  - (d) such other information as [<sup>F1</sup>OFCOM] consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if [<sup>F1</sup>OFCOM] decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if [<sup>F1</sup>OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

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**Textual Amendments**

- F1** Words in s. 100 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 40](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F2** S. 100(1A)-(2C) substituted for s. 100(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
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**Modifications etc. (not altering text)**

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting Act 1990, Section 100.